CONSTITUTIONAL DEVELOPMENT IN NEPAL

1948 - 71

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Preface

This thesis undertakes a study of 'The Constitutional Development in Nepal from 1948 to 1971'. The author has always felt as a student of Political Science that for the proper understanding of a written constitution, the intentions and motives of its framers are as important as the historical circumstances and the various social and economic forces operative at the time when it is being framed.

The modern period of Nepal's constitutional history really begins from 1948 when the first written constitution of Nepal was promulgated. Since then Nepal has undergone various ups and downs as a result of, firstly, the struggle between the King and the Rana aristocracy, and secondly, the struggle between the King and the various political parties.

The thesis has been divided into seven Chapters. The first chapter entitled, 'The Background' deals with the geography of Nepal, its social structure and its economic life and also its political evolution till the year 1948. Therefore, it serves as an introduction to the main subject of the thesis. Our conclusion is that the political development of Nepal and its modernization was checked by the geographical isolation of the country, the absence of modern means of transport and communications, a backward economic system and finally by a caste-ridden hierarchical social system.

The next four chapters deal with the Constitutions of 1948, 1951, 1959 and 1962 respectively. The study of these Constitutions

not merely formal but an attempt has also been made to deal with various external and internal pressures as well as the political aims and ambitions of the political elite.

The sixth chapter deals with the role of political parties and also with the position of the Crown as the decisive factor in the government of the country. The study shows that the Crown was able to monopolize political power and to reverse the process of political development primarily because of the weakness of the party system in Nepal.

The last chapter is in the nature of a conclusion and gives a general assessment of the Constitutional Development in Nepal from 1948 to 1971.

The thesis also contains a number of appendices containing some important published and unpublished documents connected with the Constitutional Development of Nepal. At the end a bibliography of primary and secondary sources and glossary have also been appended.

Among the Nepali sources special mention may be made of (i) publications of HMG/Nepal; (ii) non-official documents published by semi-official institutions, political parties and individuals; (iii) books in Nepalese by Nepalese scholars; (iv) unpublished documents like Sir Ivor Jenning's suggestions to the Drafting Commission, and notes submitted by members of various Commissions; (v) Nepal Gazette; and (vi) Nepalese Newspaper, Journals and periodicals.

Coming to the materials in English utilized for the purposes

of the thesis almost all that has been available at Kathmandu, Allahabad, New Delhi and Calcutta, I have utilized.

Apart from these published and unpublished materials I have also gained much from my interviews with a number of Nepali leaders, high officials, journalists and scholars. Among these I will specially like to mention Messers S.P. Upadhyaya, R.K. Shah, Dr. D.R. Regmi, S.P. Gyawali, K.P. Ghimere, H.P. Joshi, Gopal Dass Vaidya, Purnaman Shrestha and Kamal Mani Dixit.

Apart from these a number of Nepali Scholars have also been of great help to me. Among these I am specially indebted to Dr. L.S. Baral, Associate Professor, Indian School of International Studies, New Delhi, for his valuable guidance and suggestions. I am also thankful to Messars Tulsi Ram Vaidya, Loka Raj Baral, Lila Prasad Sharma, Krishna Ram Joshi, Dr. Uma Kant Tewari and Bishnu Lal Jha for their help in the completion of this work.

I am grateful to Prof. A.B. Lal who had first suggested this topic to me. I am also thankful to Prof. A.D. Pant, M.A., D.Litt., Head of the Department of Political Science, University of Allahabad, under whose supervision this work has been completed.

I am thankful to the Librarians and Staff of the various Libraries, specially those of the Keshar Library, Gorkhapatra Chapakhana,Kausi Tosa Khana, Regmi Research Institute, National Library, Madan Guthi Samtha Library, Padma Kanya College Library, National Archieves of Nepal and India, Indian Council of World Affairs Library, Sapru House Library, Jawahar Lal Nehru University Library, and also to the Editors of various Dalies and Weeklies

of Kathmandu. I aiso take this opportunity to thank all those persons whom I met in connection with this thesis at New Delhi, Calcutta, Rajasthan, Allahabad and Kathmandu. Finally, I thank Mr. B.B.L. Bhargava who has typed this thesis.

Shamba Bhakta Pant

(Shamba Bhakta Pant)

6th May, 1974.

CONTENDS

Map of Nepal in the facing Page.

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CHAPTER I

BACKGROUND

(I)

Social Setting :

It would not be out of order if at the outset a short description of the impact of geographical, social and economic factors of Nepal on its Constitutional development until the downfall of Rana rule in 1951 is given.

Nepal[1] is a small country sandwiched between People's Republic of China in the north and India in the south, extending from the Mechi river in the east to the Mahakali river in the west.[2]

Nepal lies between 26° and 30° North latitudes and 80° and 88° East longitudes. It has an approximate area of 54,362 square miles. The highest peak of the world, Mount Everest, lies in this country and there are about 200 other peaks over 20,000 feet above sea level.[3]

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1. For geographical and history of Nepal see, Pradyumna P. Karan, Nepal : A Physical and Cultural Geography, (Lexington, 1960); Nepal in Map, (Department of Information,HMG/Nepal, 1966); Visitors Guide to Nepal, (Department of Tourism, HMG/Nepal, 1971); Daniel Wright, History of Nepal, (Cambridge, 1897); Bickram Jit Hasrat, History of Nepal, (India, 1970); Ramji Upadhyaya, Nepalko Itihas, (Banaras, 1951 A.D.); Balachandra Sharma, Nepalko Itihasik Rupa-rekha, (Banaras, 2008 V.S.); Dhundiraj Bhandari, Nepalko Aitihasik Vivechana, (Banaras, 2015 V.S.); Baburam Acharya, Nepalko Samchipta Britanta, (Kathmandu, 2022 V.S.).
2. See the Map of Nepal on the facing page.
3. Harka Gurung, Annapurna to Dhaulagiri : A Decade of Mountaineering in Nepal Himalaya 1950-60, (HMG/Nepal, 1968), p. 105.

Despite the rugged nature of the country, we can discern three distinct ranges and four alternating lowlands and valleys.[4] The three ranges are Chure range in the south, the Mahabharat Lekh in the middle and the Himalay range in the north. The Chure range has a general elevation from 750 meters to 1,500 meters. The Mahabharat Lekh runs parallel to the Chure range with general elevation from 1500 meters to 2700 meters. The main Himalaya range in the north rises above 8000 meters.

These ranges are alternated by characteristic lowlands and valleys southernmost lowlands, called the Terai, with a width of 25-40 km is the northward extension of the Gangetic plain. There is much similarity between the Terai of Nepal and the Gangetic plain of northern India. There are extensive lowlands between the Chure range and the Mahabharat Lekh which are popularly referred to as "Duns". The Pahar Zone, including numerous hills and velleys, lies between the Mahabharat Lekh and the main Himalaya range. The Pahar zone is characterised by several longitudinal valleys between the main Himalaya range and the border range are found only in western and central Nepal. These valleys are particularly extensive in the western most part of the country.

The climatic condition (temperature and rainfall) varies from one region to another. Altitudinal variation is a factor that has greatly affected the climatic condition of Nepal. In the Terai, the average altitude is less than 1000 feet above sea level, but it rises above 20,000 feet in the north. Hence a traveller usually experiences different climatic conditions as he moves from the

4. Harka Gurung, "Landscape Pattern of Nepal", (Art.), The Himalayan Review, Vol. IV, 1971, pp. 1-10.

Terai region to the Himalayan region in the north. Generally four major climatic zones are recognized: (i) humid tropical zone, (ii) moist sub-tropical zone, (iii) temperate zone, and (iv) tundra zone.[5]

From the linguistic point of view, the people of Nepal may be divided into three distinct groups: (i) the Khasas and Aryans, speakers of Nepali, a new Indo-Aryan language which has its closes affinites with Rajasthani, Lahanda and Kumauni languages; (ii) the Tibeto-Burman speaking people of the hills; and (iii) the people of Indian origin who speaks various dialects of Hindi current in northern Bihar and Uttar Pradesh.[6] These groups are derived from two major racial stocks - Aryan and Mongoloid. The Aryans and the Khasas are ethnically close to each other throughout. There has, however, been a lot of intermixing between these major racial stocks.

In the Himalayan highland there are several Monogoloid communities like the Bhotiya, Baragaunle, Dolpo, Manangba, and Larke. But many of these may be sub-divided. For example, the Bhotiyas include Sub-Communities of the Sherpas, Lomi, Thudam and Topka Gole people, Olangchung people, Lopa of Mustang, Baragaunle, Dolpo people, Manangba, Larke and Siar people; the last of which consists of Thakali, Gurung and Magar. But most of the Bhotiyas are Sherpas, and have a close affinity with the Tibetans. They are aboriginals

5. See : Harka Gurung, "Geographical Foundation of Nepal" (Art.), The Himalayan Review, 21st International Geographical Congress, (Nepal Geographical Society, 1968), Nepal in Maps, Ibid.
6. Gopal Singh Nepali, "The Nepalese People" (Art.), B.H.U. Gazette, 1968, Vol. 9, No. 28, April 22, 1968, p. 9; See: "The Ethnic groups of Nepal", United Asia, Vol. XII, 4, 1960, pp. 339-344.

of these regions and have maintained close contact with other ethnic groups having different cultural traditions and inhabiting this area. The northern people, when examined closely, are so different from one another that any generic name, if given them, will fail to explain their differences. The term 'Pahadi', the people living in the middle ranges of Nepal, would be a case in point.[7]

In the lower Himalayan mountains and valleys there are tribes like the Rai, Limbu, Tamang, Sherpa and Sunwar in the east and Jirel, Gurung, Thakali, and Magar in the West.[8] There are several "broken tribes"[9] like the Chepangs, Kusunda and Hayns living in different pockets in the west. Brahamins and Chhetris, including some artisan classes, are spread over the whole country, but generally in the south of the Mahabarat Lekh.

In the Kathmandu Valley, which was called "Nepal", before the Gorkha conquest, there was what is called "Newari Civilization". The caste division of the Newars constitutes a stratified society with the full range of status - groups typical of the Hindu society, but complicated by vertical division into Hindu and Buddhist groups. Ethnically they are mixture of Mongoloid and Nordic groups. The Newars, a politically conscious mercantile group, are mainly concentrated in the Kathmandu Valley.[10] Their language is Newari,

7. Dor Bahadur Bista, The People of Nepal, (Second Edition), HMG/Nepal, 1972), pp. 1-15.
8. Ibid., pp. 16-17; See Francis Tuker, Gurkha: The Story of the Gurkha (London, 1957), Chap. 4, p. 27.
9. See: R.L. Turner, Notices of Books - J. r. asiat, Soc. G.B. Irekand, January 1931, pp. 196-98.
10. Von Furer-Haimendorf, "Elements of Newar Social Structure" (Art.), Journal of the Royal Arthropological Society, (London, 1956), Vol. 86, Part II, pp. 15-38; Gopal Singh Nepali, The Newars, (Bombay, 1965), pp. 28-29; S.D. Muni, Foreign Policy of Nepal, (New Delhi, 1973), p. 38; Tuker, op. cit., Chap. 2, p. 11.

greatly influenced by Sanskrit, but still distinctly belonging to the Tibeto-Burman family of languages. The term Newar, it would appear, derived from the name of the country. After all, theirs is a cultural entity, despite the fact that they are not one single ethnic group in the sense Gurungs, Magars or Tamangs are.[11]

In the valleys of the Inner Terai and in the fertile outer Terai land there are Brahmins, Rajputs and occupational castes, namely, Tharu, Danuwar, Majhi, Dari, Rajbansi, Bodo, Dhimal and Bodo, Danbar and Muslim.[12]

Kind Prithivinarayan Shah, the ruler of Gorkha, who defeated and brought a few small states into a unified Kingdom of Nepal, described the country as the land of four divisions (Varna) and thirty-six communities (Castes). After his occupation of the Kathmandu Valley, people from the hills continued to pour into the Valley and settle there. Most of them were Brahamins, Chhetris, Rais,Limbus, Tamangs and Magars. Brahamins and Chhetris began to settle in the valley and others began to dwell in the

11. Bista, op. cit., p. 109.

12. Ibid., p. 1; See: Stanely Maron, Leo E. Rose and Julian Heymn, "Survey of Nepal Society", Human Relations Area File, South Asia Project, University of California, 1956. (typed manuscript at ICWA Library, New Delhi); Edited by: Christoph Von Heimendrof, Caste and Kin in Nepal, India and Ceylon : Anthropological Studies in Hindu - Buddhist Contact Zones, (Bombay, 1966), p. 25.
According to the Census Report 1972, there are 6,581,287 people in the hills regions, 880,194 in the Inner Tarai, and 3,99, 4,501 in the Terai region. The religions breakdown of the population is 10,330,009 Hindus, 886,411 Buddhists, 351,186 Muslims, 25,41 Jains, and 5,836 belonging to other religions. These divisions also represent the wide social, culture and economic gulf that separate them from one another (Final Report, National Census 1972), The Rising Nepal, (English Daily), Vol. VIII, No. 222, July 25, 1973.

high hills around the Kathmandu Valley. Economically, they are not well off than the Newars and Chhetri peasants. Many of them have to supplement their income by working as occasional wage earners. Some of them are still owners of ancestral landed property. Most of these, who live in the well-consolidated traditional settlements, are self-sufficient in food production although many of them need to borrow money at times. The two major ethnic groups of the "Nepal Valley" also called, the Capital Valley, are the indigenous Newars and Chhetris or Khas and the most populous of the Nepali-speaking groups collectively known as Parbatiyas (highlanders). More than any other people, the Brahamin and Chhetri groups acquired politically dominant role in formation of the modern Kingdom of Nepal, as also the social and religious realms.[13] The Brahamins occupy the highest position in the caste hierarchy, but the Chhetris and Newars enjoy the most powerful position because of their wealth and acumen. Of all the people of Nepal, the Brahamins and the Chhetris are most widely distributed. The social and economic organisations of the Terai people is similar to that of the hill regions. Agriculture is the primary occupation of the Terai people.[14] Until the enforcement of the Land Reform Act of 1963,[15] most of the Terai land was owned by the ruling class

13. Haimendrof, op. cit., p. 18.
14. The Terai covers an area of 8000 square miles. The majority of the population lives in the hilly regions. This area covers almost 1/7 of the country's territory and in some of the valley of which the Kathmandu is the biggest one.
15. The system Chakari, Pajani, Hajiri and Baksauni were the maximum loyalty to the authority before 1951. The Bharadars and other officials became the master on the will of the authority. Then the authority used to distribute the land to his followers. The lands were classified into four divisions: (i) Raikar, (ii) Guthi, (iii) Birta, and (iv) Jagir. - Mahesh Chandra Ragmi, Land Tenure System in Nepal (Art.), United

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and bureaucats of the capital, Kathmandu.

Closed Settlements :

Nepal's geographical position accounts in a large measure for the prolonged isolation as well as the fact of her slow political progress, economic immobility and social backwardness. Lack of transport and communication also hindered the integration of the population, which demographically also had lacked coherence. R.S. Chauhan has stated :

> "While both geography and demographical features turned Nepal into a highly segmented political entity, the superstructure of a Hindu society imposed on her people, introduced a caste-ridden hierarchical social system which inhibited the process of the emergence of Nepal as a well-integrated nation."16

The country before and during the Rana period remained cut off from the rest of the world. Its being land-locked further heightened this situation. It was part of the policy of both the Shah and the Rana rulers, particularly of the latter, to keep the country in such isolation. The consequence was that the country remained primarily agrarian. The number of the privileged was few. They were conservative in their outlook and were socially and politically influential. If people of the Kathmandu Valley and

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Asia (Bombay, 1967), Vol. 18, No. 4, p. 201.
In 1959 Nepali Congress (elected Government) fixed 25 Bighas free with tax and if he wants to keep more than that he had to pay extra revenue taxes and for Pahar side 50 ropanis with the same ratio of revenue taxes.
In 1963 King Mahendra made efforts for the Land Reform in the country. Now, the rich people can no longer benefit by controlling vast land holdings, as the ceiling of twenty-five (forty acres) Bighas in the Terai and eighty ropanis in the hill areas have been fixed by the Land Reforms Act, - Land Reforms Act, 1963 A.D.

16. R.S. Chauhan, The Political Development in Nepal 1950-70- (Conflict between Tradition and Modernity) (New Delhi, 1971), pp. 5-6.

some parts of Terai remained politically conscious, it was mainly due to the impact of court politics at the centre and to the proximity with India. Till 1951, the Terai people were regarded as the second class citizens colonised people at best. Economically, they were the most exploited and politically the most unfavourably discriminated section. Most of the Terai land was controlled by the top feudal lords, who also occupied seats of power in the government. They were positioned in the Terai to control the local population. In the hilly regions different tribes continued to observe their social customs. They were condemned to live in an atmosphere of superstition. No social or political activity marked the way of their life. This discussion may be concluded by stating the views of Dr. Baral :

> "The Nepalese population had the same social, religious and superstitious traditions and beliefs. It had the same stratified society which was conditioned by a highly traditional environment untouched by modern communications. It had the same vast unskilled, ignorant and uniformed public. It had the same rural-based agrarian economy that had remained in the same state as it was in olden times without being substantially altered. .... In such a state of cultural flux it was indeed difficult for the government to wean the people away from traditionalism."[17]

Economic Policy :

Autonomous public opinion serves as the most doses of effective imputs into any system for political and Constitutional development. Such public opinion alone has the brilliant prospect of exertive pressure on policy-makers and decision-executors. But, as matter stood, there was hardly any scope of being exerted in

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17. L.S. Baral, "Nepal's Apprenticeship in Democracy 1951-60." (Art.), India Quarterly, (New Delhi), July-September, 1971, p. 195.

Nepal until the downfall of Rana rule. Though the authority had desired some reforms, socio-economic, religious or political, the priest class, administrators, and military feudals who were in power-corridor always had braked the reform measures in consideration of their vested interest, or, to safeguard their traditional privileges and supremacy.[18] During the semi-colonial Rana regime some economic measures were taken and a drastic programme was planned for the economic development of the country. But Nepal's economy remained backward and stagnant due to their exploitative policy. Besides that, the country's isolation kept it away from modern influences.

But the 'traditional' or 'deliberate' economic policy of the government the country remained in isolation from the rest of the world. The country did not have a planned economic policy which could possibly have facilitated its economic development. For two centuries there was a wide gap between the isolated, self-sufficient and self-sustaining villages, on the one hand, and the urban areas which were the centre of administration, pilgrimage, commerce and manifacture on the other. Means of transport and communication were highly underdeveloped. During the Prime Minister of Juddha Shamsher some economic measures were taken and an economic development programme was envisaged. The traditional economic policy of the government was changed after 1930. A powerful development agency called 'Udyoga Parishad' (Development Board) was created

18. Maharaja Ranoddip, Deva Shamsher and Padma Shamsher were the liberal and reformist Prime Minister of Nepal. But due to the court politics Ranoddip was murdered. Deva Shamsher and Padma Shamsher were forced to be abdicate. - For detail See later on in this Chapter '<u>A Century of Autocratic Rule</u>.'

in 1935 when a few young intellectuals showed their dissatisfaction at the backwardness of the state economy.[19] But the proposed development programme failed to deliver the goods. Kathmandu alone was made a centre of development in terms of education and mass contact. Though the Rana ruler showed their desire, no mentionable fruit came of the development programme. "Nepal's whole transport system consisted of some 20-30 miles of rail-roads and 40-50 miles of motorable roads. In the name of industries there existed only a few match and jute factories in Biratnagar. As regards agricultural facilities, there were none. Trade was at a very low key. ... Thus one finds that the feudal order in Nepal not only upheld the interests of the privileged classes but kept the State underdeveloped and weak, the society conservative and orthodox, and the people ignorant and exploited."[20]

During this period education was a neglected thing. The steps that the various rulers took in the field of education were inadequate and restrictive in nature. The few educational reforms which were carried were far from satisfactory. During the Rana period some schools both English and Sanskrit and one College, affiliated to an Indian University were established. A Library, 'The Bir Library', was also set up. Education in its trail, as was feared by the rulers, brought new ideas which infused a sense of intolerance in the new generation and impelled them to protest against the injustice and tyranny of the Rana oligarchy.[21] In such a period, "Nepal, with her backward economy, mass illiteracy, and with no liberal tradition, was certainly ill-suited for a democratic

19. The National Income in the Rana period was only three corers of Nepalese rupees.
20. Chauhan, op. cit., p. 10.
21. Ibid., p. 16.

experiment."[22]

(II)

POLITICAL EVOLUTION OF THE CONSTITUTIONAL SYSTEM OF NEPAL FROM 1769 TO 1948 A.D. (1826 to 2004 V.S.)

(A)

Early History :

There are no historical records as such about the Nepalese administrative system except some stray accounts in the Vamsavalis during the earlier historical period. This was the period of the rule of Gopalas, Ahirs and Kirats. Inscriptions of the Lichchhavis, who ruled the Nepal Valley between the fifth and the eighth centuries, give some idea about the administrative system of the Kirat period.[22a] According to one Nepalese source the Kirati government was a benvolent monarchy. The Kind had a few courtiers to help him in running the administration. He was the sovereign ruler. The Kirata Kingdom was divided into Thums, each being administered by five elders, called Panchas. The Panchas collected raikars (state taxes), maintained law and order and decided petty disputes in the villages regarding land, pond, trade etc.[23]

With the advent of the Lichchhavi dynasty (464 A.D.),[24] the historical period began in Nepal. We know names of some of the rulers of this time.[25] The Lichchhavi administrative system had

22. G.P. Bhattacharjee, India and Politics of Modern Nepal, (Calcutta, 1970), p. 43.
22a D.V. Vajracharya, "Lichchhavi Kalko Itihas ma Kiratko Prabhava", Purnima, No. 17, (Itihas Samsodhan Mandal, Kathmandu) pp. 1-18.
23. Bista, op. cit., pp. 28-29. See: Iman Singh Chemjong, Kirat Itihas, (Gangtok, 1952).
24. R. Gnoli, Nepalese Inscriptions in Gupa characters, Part I, (Rome, 1956).
25. Names of these rulers are Ravi Gupta, Kramalila, Amsuvarma, Jisnu Gupta and Visnu Gupta.

three tiers, namely (i) the central administration, under a hereditary King having the title of '<u>Bhattarka Maharaja</u>' (King Sovereign) (ii) the provincial administration, under centrally appointed '<u>Samantas</u>', and (iii) the village administration, under locally elected '<u>Panchali</u>' (Council).[26] The administration during this period was paternal in nature. The King addressed his decrees direct to the heads of the families in the villages.[27] The provincial administration was controlled by the Samanta. There were <u>Mahasamantas</u> (Chief of Samantas) who also claimed for themselves a status equal to that of the King. In the administrative hierarchy, there were King, Yuvaraj, Mahasamântas, Samantas and Panchas.[28]

During the Malla period (1200 A.D. - 1768 A.D.) the titles in the administration have been divided into the following presedence. Here in the senior echelon were the <u>King</u> and the <u>Cerown Prince</u>, called, <u>Yuvaraja</u>, (also known as Saheb or Nayak). Below them were high officials of the King's court like <u>Kazi</u> (Judge), <u>Umrao</u> (Commandant), <u>Kharadar</u> (Chief Record keeper), <u>Diwan</u> (Adviser clerk), <u>Kotwal</u> (Fort Keeper), <u>Qanungo</u> (Legal Expert), <u>Baksi</u> (Field Marshal), <u>Amalidar</u> (Revenue Collector) etc. In fact, the King and his courtiers controlled the central administration of the state. In the districts there were <u>Visayadhipati</u> (Provincial head), <u>Kwatha Nayaka</u> (Fort-in-charge) and <u>Nayaka</u> or <u>Duare</u> (Local Officers) to look after the local administration.[29]

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26. Sylvain Levi, <u>Nepal</u> : <u>Historical Study of a Hindu Kingdom</u>, Vol.I, Trans. in English from the original in French, in typescript, (Paris, 1905) Keshar Library, Kathmandu, pp. 25-26.
27. Levi, Ibid., p. 363.
28. D.R. Regmi, <u>Ancient Nepal</u> (Second Edition) (Calcutta, 1960), pp. 183-89; Jagadish Chandra Regmi, <u>Lichchhavi Sanskriti</u>, (Kathmandu, 2026 V.S.), pp. 357-421; Vajracharya, op. cit., <u>Purnima</u>, No. 10, pp. 9-17 and No. 11, pp. 6-7.
29. D.R. Regmi, Medieval Nepal, Vol. II (Calcutta, 1966), Chap. <u>Administrative</u>, pp. 432-93. <u>Avilekha Sangrah</u>, Part IX, (Itihas Samsodhan Mandal), p. 29.

In fact, Malla rulers had adopted Kautalya's 'Saptang' theory. Among the Malla rulers, Sthiti Malla (1380-95 A.D.) topped the list because he had codified and framed many laws for the first time in the country.

From the Kirat period until the downfall of the Mallas in 1769, the monarchical system was based on tradition, usages and practices, most of which were derived from the Arthasastra, Manusmriti, Yajanvalkya Smriti and other texts of Sanatam Dharma. The Nepalese history was characterized by the rule of different monarchs who were absolute in the exercise of their powers. As a matter of fact more or less the same tradition prevailed in all the Himalayan States or after their unification into one political entity of Nepal towards the end of the eighteenth century.

Though many dynasties ruled over Nepal before Prithivinarayan Shah, there is no historical evidence of the existence of any written constitutional rules. According to some Vamsavalis, 'the system of government was based on traditions usages and practices'. Sthiti Malla was the first ruler of Nepal who had codified and implemented some laws in this country. Rules and regulations, customs and practices relating to social and economic aspects of the statex were codified.

After the unification of Nepal by the Gorkha ruler, Prithivinarayan Shah, in 1769 A.D., some written laws of the time of Sthiti Malla were codified, and Prithivinarayan Shah began to rule the country with some constitutional changes on the basis of some traditions, usages and practices of the Nepalese society. He gave

some direction to successors in his Dibyopadesa[30] (Divine Sermon) about ruling the country on the basis of some changes in the rules and regulations of administration and they were followed until the rise of Rana autocracy in Nepal.

(B)

Shah Hegemony : From 1769 to 1846 A.D. (1825 to 1903 V.S.)

The Shah of Gorkha, after the conquest of Kathmandu Valley in 1769 A.D. (1825 V.S.), established a political system in Nepal which was essentially of the authoritarian-military type. Monarchy was hereditary,[31] based on the principle of primgeniture. Every monarch enjoyed traditional prerogatives and assumed the title of Sree Panch Maharajadhiraja.[32] He was sovereign in the real sense

30. L.S. Baral doubts of the Divya Upadesh was written during the life time of King Prithivinarayan Shah. L.S. Baral, Life and Writings of Prithvinarayan Shah (thesis) (typescript), Indian Council of World Affairs, Sapru House, p. 10; YogiNarahari Nath and Baburam Acharya, (eds), Prithivinarayan Shahko Divya Upadesh (Kathmandu, 2016).

31. In Nepal, before King Tribhuwan Bir Bikram Shah Deva, all the heir-apparent were known as 'Shajada' but from the time of Tribhuban, heir-apparent, Mahendra Bir Bikram Shah Deva, was decorated by the title of 'Yuvarajadhiraja' in 1921. Other sons of the King were also known as 'Saheb' who stood in order of birth. Later, they called 'Adhirajkumar' after 1951 A.D.

32. The full title of the King, which was called Prashasti (eulogy) ran as followed:
"Swasti Sri Giriraj Chakra Chudamani Narayarayanetyadi Virudavali Biraj Man Sri Sri Sri Sri Sri Maharajadhiraja....." This is known as "Eulogy" which has been used by many Kings of Nepal but King Prithivinarayan Shah conqured Kathmandu valley and other neighbouring states and welded them together as a single political entity, he assumed the title of Great Sovereign i.e., Kind over kings and possessed absolute powers. Till 2019 V.S. (1962 A.D.) was also included in the Eulogy, the title, 'Bhadur Shumsher Jung', which had been conferred by Moughal Emperor, Shah Aldm II on King Prithivinarayan Shah in March 12, 1772 A.D. which was discarded by King Mahendra in 2019 V.S. (1962 A.D.). Baburam Acharya, Shree Panch Prithivinarayan Shahko Samchipta Jivani, Vol. IV, (Kathmandu), pp. 717-18.
In all Prithivinarayan Shah's letters his name appears with

(continued on next page)

of the term. As the sovereign, the King wielded supreme authority in both civil and military affairs of the state.

Under the early Shah Kings, administration[33] was based on simple delegation of royal powers to a small group of officials, the Bharadars, who constituted the court of Nepal.[34] The Chautarias, the Kazis, the Sardars, the Khazanchis, the Kapardars and Dhrmadhikar constituted the order of Bharadars, who were to aid and advice the King in the exercise of his executive functions.

At the head of the administration was the King. If he had not attained the age,[35] either his mother or his uncle or the nearest collateral was to rule in the name of the Regency Council.[36] The.

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three Shris. But in one there are five, the three Shris followed till 1846 A.D. in the beginning of the Eulogy. The use of five Shris (Sree Pancha) for the names of the Shah Kings and their Queens, Queen Mothers, King's brothers and sons was adopted when Jang Bahadur, the Rana Prime Minister was designated Sree 3 in 1856 A.D.- Baral, op. cit., p. 34.

The title 'His Majesty' was conferred by the British Government after the Treaty of 1923 A.D. From this time Kingdom of Nepal became a sovereign independent Hindu State- 'Recognition of Nepal', Journal des Debats, 3rd March, 1924 A.D.

Perceval Landon, Nepal, Vol. II (London, 1928), p. 131; D.R. Regmi, A Century of Family Autocracy in Nepal (Second Edition), (Kathmandu, 1958), p. 137.

33. The Gurkha conquest of 1769 A.D. assimilated local customs into the general law of the country.
34. Bhuban Lal Joshi and Leo E. Rose, Democratic Innocations in Nepal : A Case Study of Political Acculuration, (Berkeley, 1966), p. 26.
35. At that time the age limit to be the King and heir-apparent was Twenty-one years of age. The same tradition has been established up till now.
36. The Regent was called Nayab, In the infancy of the King, he enjoyed all the powers and prerogratives of the King. If the Regent is too old or a woman, the Mulkazi or whosoever enjoyed his or her confidence exercised authority in behalf. There was a succession Act framed by Prithivinarayan Shah, under which the Regent was appointed.- D.R. Regmi, Modern Nepal, (Calcutta, 1961), p. 279.

Two candidates happened to have claims to the Regency in the

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King as the head of the executive performed several duties. He appointed and dismissed all those in government service. He had the power to declare war, conclude peace and sign treaties. He prepared accounts of income and expenditure, allocated revenues at his own will, distributed favours and made grants of land to whomsoever he pleased and himself audited the expenditure.

In the rule making (legislative field) he used to decide important matters of the state with the consent of Bharadars.[37]

(Continued from previous page)
infancy of King Rana Bahadur Shah. The first was Bahadur Shah, the infant king's uncle and the second was Queen Mother Rajendra Laxmi in 1778. In the time of Rajendra Bikram Shah, Queen Tripura Sundari, grandmother of the infant King, continued to be Regent in 1816 A.D.

37. The various officials were placed in the following order according to the seniority of ranks who are known as Bharadars. These officers are, in order of importance, as follows:
   1. The Choutra (Collateral member), who often acted as the Prime Minister, specially the Regent was not powerful.
   2. The Kajees (Ministers), 4 Civil administrators who supervised all civil and military affairs.
   3. The Sirdars (Military Commanders) who only seldom managed civil affairs.
   4. The Khurdars (foreign secretaries) functioning as secretaries in political and external departments.
   5. The Kuppardars, ~~(foreign secretaries) functioning as~~ in charge of the Raja's wardrobe, jewels, etc., who also audit his accounts.
   6. The Khuzanches (Treasurer).
   The foregoing six officers being esteemed the principal administrators of the government, are, on that account, dominated Bharadars, a term denoting "bearers of burthens". Except these Bharadars there were:
   7. The Ticksali (in charge of mint)
   8. The D hurma-Udhikar, to try civil and criminal cases as the highest judiciary.
   9. The Bicharies, who helped the Dharmadhikar in investigation and trial.
   10. The Dittha, in charge of police and courts.
   11. The Jaithha-Boora, elders and aged wisemen whose consuel was invited for important decisions.
   12. The Soubahs, governor of districts.
   13. The Omrahs, military commanders of outposts.
   - Colonel William Kirkpatrick, An Account of the Kingdom of Nepaul Being the Substance of Observations made during a Mission to that country in the year 1793 (London, 1811), p. 197; Baral, op. cit., p. 1.

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Most of the titles in the administration were copied from Moughal and Pesawa (specially Aribic and Persian language) administrations. However primitive, the government was based on certain structures. They used to assemble in the King's court to express some opinions for the welfare of the state. When the King issued summons the Bharadari met to discuss the matters placed before it by him. The meetings were presided over by the King and the approved documents were to be signed by the high ranking officiers (Consultative Assembly)[38] and the King himself with the Red-Seal (Lal Mohar)[39] affixed to them.

In the judicial field, the King functioned as the law-giver. "The judicial system was largely based on Ram Shah's Code, which drew up Hindu and customary law. The enlargement of his Kingdom made Prithvinarayan Shah feel that it would be wise to draw up a revised judicial Code and prescribe a new the duties of the various caste."[40]

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But in the time of King Rana Bahadur Shah it was arranged as follows:
Bhaiyed, Gotiya, Chautaras, Mukhtiyar, Kazi, Sardar, Khanzachi, Kappardar, Dhramadhikar, Kharidar, Dyarya, Subba, Jamadar, Sradar, Pharas, Omar and Ijaredar.
- Itihas Prakash, I, p. 129; Regmi, Ibid., p. 280; Hodgson Paper, Vol. 51 and 55, Tribhuvan University Library, Kathmandu.

38. All these officials and officers met together in a state Consultative Assembly. Later on this body was known as Bharadari.
- Baral, op. cit., p. 1.
39. Lal-Mohar which literally means a red seal is the name given to a legal instrument by which the King confers titles, honours, offices and Jagirs, ratifies legislation and issues ordinances, etc. It is known as Lal Mohar because of the red seal which is set on the document along with the royal signature and witnessed by other officers. See Appendix.1... Photo Print No.I See also: Satish Kumar, Rana Polity in Nepal (New Delhi, 1967) p. 24, f.n. 34.
40. Baral, op. cit., p. 1.

He issued codes, constituted crimes and punishments and promulgated regulations(Sawals) for the guidance of the departments and offices concerned. Though the King was the law-giver but the court was under the supervision of Dharmadhikar.[41]

The judicial organisation in the pre-Rana period was not much developed. There were two sets of courts : the Sadar Court at the capital and the Provincial courts in the districts. The Sadar Courts known as Nyaya Sabhas were four in number, of which the one the Kotlinga, was the highest and was presided over by the Dittha who might be called the supreme Sadar Judge. The Dittha was also the head of the three other courts. An appeal against a decision of Sadar court would lie in the Bharadari.

As regards the district court (Mofussil Courts), Hodgson tells us that there were two courts for the districts in the east of this city. The judges of these courts were appointed by the Dittha. Apart from these courts, we find that the provinces of Palpa, Doti and Kirant head their own system of courts. There were other judicial officers as well known as Bicharis, appointed by the King and

41. King Prithivinarayan's Memoris state that he wished the administration of Justice to be imparitial. He make the following define proposals: (a) the judicial officers Ditthas should be chosen from the Thakuris; (b) their assistant Vicharis should be Magar; (c) a Pandit Dharmadhikar should be attached to each court to expound the Dharmasastra and interpret customary Law- Ibid., p. 1.
There were two sets of courts in the pre-Rana Nepal. As reported by B.H. Hodgson in his well-known essay, 'On the Law and Legal Practice of Nepal's, the courts at the capital were called the Sadar Courts, and those in the Mofussils (Terai area) were known as the Provincial Courts- B.H. Hodgson, 'On the Law and Legal Practice of Nepal' (Essay), Answer to Question XCV, Miscellaneous Essay Relating to Indian Subjects (London, 1880), II, 211-36.
According to Badaguruju, Khagendra Raj Pandey, till 1851, Dharmadhikar had functioned as the Chief Judge of the Royal Court but after 1851 A.D. Rana Prime Minister appointed his one brother in this post but Dharmadhikar remained one of the member of this court.

Fauzdars who appointed by provincial Governors.

The Shah King was technically an absolute monarch responsible to no one but himself and ruled by Divine Right[42] with the help of the two bodies, Thar Ghars and Bharadars till the reign of Rana Bahadur Shah in 1800 A.D. For the purpose of administration, however, the King employed Thar Ghars[43] and Bharadars.[44]

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42. "It may be mentioned here that the King in Nepal is regarded as the incarnation of Vishnu. He is Mahipati, Lord of the Land, Narapati, Lord of men, and Deva, that is God. So Kingship in Nepal is divine and therefore, the object of popular reverence and loyalty."
- Hem Narayan Agrawal, The Administrative System in Nepal 1901-1960 (Unpublished Thesis for D.Litt) (Indian Institute for Public Administration, New Delhi, 1970), p. 517.
43. Though Satish Kumar has defined 'Thar Ghars' as 'Caste' and family but the real meaning of That Ghars is that Thar Ghars menas 'Common people'. Therefore Ram Shah distributed the principal offices of the state among Pandey, Pant, Aryal, Khanal, Rana and Vohra.
- Gorkha Vamsavali (First Edition) (Gorkhachyatilla, Varanasi, 2009 V.S.), p. 30.
But data about the names of the Thar Ghars and their portifolio were provided by Chitaranjin Nepali, Kathmandu, Yogi Narharinath and Baburam Acharya(eds)., Prithivinarayan Sha Dev ko Divya Upadesh (Kathmandu, 2010 V.S.), 32 (Nepali), as given by Kumar, Ibid. f.n. 7-9 are correct.
Dravya Shah, therefore distributed the principal offices of the state among the members of yhose families as follows: (i) Narayan Das Aryal - Guru; (ii) Sarveshwar Khanal - Purohit; (iii) Ganesh Pande - Minister; (iv) Bhagirath Panth - Senapati (Commander-in-Chief); (v) Ganga Ram Rana - Justice; (vi) Keshava Vohara - Revenue. This Thar Ghar remained unchanged till 1846 A.D. See, Levi, op. cit., p. 365; Nijamati Darta Phant of Kamandari Kitab Khana, Kathmandu, registered up to 1905 and 1907 V.S.; Kumar, op. cit., p. 42, f.n. 7-9.
44. Bharadars means State Councillors. In this body there are the members of Thar Ghars and other high officials appointed by the King. Thus the expanded body began to function as Bharadars. In an early days K'osi called 'Bharadari Sabha' or 'Great Council'. Literally Bharadars means 'Bharadars are ministers of the state so called for sustaining the Bhar (Burden) of the state affairs.
- Miscellaneous Essay relating to India, Indian Subjects by Hodghton Hodgson, Esq.,FRS, Vol. II

Thar Ghars literally means those six chief (Chhathar) families of the different castes who had assisted Dravya Shah in the conquest of Gorkha. These families belonging to different castes and ethnic groups, formed a hierarchy. Prithvinarayan Shah also distributed the principal offices of the State among them as it was they who had assisted Dravya Shah. This institution continued in this form till the reign of Rana Bahadur Shah. The King employed Thar Ghars as Ministers. In fact, they were the King's co-ordinators of administration of the state.

Bhardars means Thar Ghars, high civil and military officers and other distinguished persons of the state. Later on, the hereditary body of the heads of six families who formed the hierarchy, was enlarged to thirty-six in number. When it was expanded this body began to function as Bharadari. These persons who took part in the Assembly in the King's court to express some opinions or suggestions for the welfare of the state constituted the 'Bharadari' or Consultative Assembly. The meeting was presided over by the Kind and documents approved of by this body were signed by the high ranking officials and the King himself with the red-seal (Lal Mohar), which declared its validity.

In beief, the political process under the Shah rulers was "a deadly game of political poker played by the few privileged elite groups of the court belonging to those families that had accompined King Prithivinarayan Shah, when he transferred his capital from Gorkha to Kathmandu but the actors and the pattern remained essentially the same."[45]

45. Joshi and Rose, op. cit., p. 26.

"In fact, Prithivinarayan Shah, who in a sense may be called the founder of modern Nepal, was not a feudal King. But the agency called the government, was nothing but a medieval structure of administration based on the person of the King, who was at the top."[46] No doubt, as already stated, the King ruled with the advice of a few top officers and heads of a few families, but he was the sole and single source of all authority and it was to him that all obedience was due. He could elevate anyone to the highest office when pleased and degrade any one who fell from his grace.

These two bodies (Thar Ghars and Bharadars) were very powerful and important in the reign of Prithivinarayan Shah and continued to be so till the beginning of the reign of Rana Bahadur Shah. When Rana Bahadur Shah became Mukhtiyar[47] the power of these chiefs and Thar Ghars was reduced. A new body 'Bharadari' was established in place of the old councillors (Thar-Ghars) to represent the country. This large council performed the advisory and executive functions of the state. This was under the supervisions of the Four Kazis (Char-Kazi).[48] Some reforms were made later on by distributing the powers and functions to Mukhya Chautariya and Kazis.[49]

46. B.P. Koirala, 'Rajatantra' (Art.), Tarun, (Vanarasi), Bulletin, No. 3, April 1971, p. 22.
47. Rana Bahadur Shah was the first Mukhtiyar (Chief Minister) among the members of the royal family. He was appointed in this post by his infant son after his return from Vanarasi in 1803. See: Lal Mohar, Photo Print, No. II.
48. Four Kazis became most powerful personalities in the Royal Court after Prithivinarayan Shah.
49. The post of Mukhya Chautriya was very important in the beginning of the Shah regime because this post could be occupied only by the members of the royal family. Mukhya Chautariya was the Chief man of the Royal Court. But Kazis were appointed by the King on his own discretion from among the members of Thar-Ghars.

Later Developments under Shah Kings :

Prithivinarayan Shah ruled over Nepal for seven years (1769-75 A.D.). Although he spent most of his life in expanding his territorial domanin, he established a stable government on the basis of tradition, usages and practices of the Nepalese society, which has been continuing uptil now in one form or the other. After Prithivinarayan Shah, there was struggle for power between the chiefs of the selected castes and the Thar Ghars.

In the time of Girvana Bikram Shah the post of four Kazis changed and a large council was instituted as Bharadari.[50] The post of Mukhtiyar was created and this continued till the rise of Rana autocracy. Consequently Mukhtiyars like Rana Bahadur Shah, Damodar Pandey, Bhimsen Thapa, Mathbav Singh, Fateha Jung Chautariya, Jang Bahadur and other Rana Prime Ministers wielded full powers by Lal Mohars.[51]

For the first time in the history of Nepal King Rana Bahadur after his abdication became the Mukhitiyar (Prime Minister) of the new King. After Rana Bahadur another member of the royal family, Fateha Jung Chautariya, became the Mukhtiyar (1840 to 1843 and 1845 to 1846) in the last days of King's absolutism. Except these two persons who were appointed as Mukhtiyars in the goverence of

50. Francis Tuker, Gorkha : The Story of the Gorkhas of Nepal, (London, 1957). See: Miscellaneous Essays relating to India, Indian Subjects, Honghton Hodgson, Esq. FRS, Vol. II.
51. The first Lal Mohar for 'Mukhtiyarship' was granted by King Girvana Yudha Bikram Shah to his father as the Mukhtiyar of Nepal. From this time to till Rana period, the convention has been established the King should grant the red-seal (Lal Mohar) when he appoints a person in the post of Mukhtiyar with full powers. See Photo Print II.

the country, the officer was always held by persons outside the royal family of Nepal. The Mukhtiyar became the chief adviser of the Crown.

After Rana Bahadur Shah's Mukhtiyarship, his councillor, Bhimsen Thapa became the _de facto_ ruler of Nepal in 1804. He had abolished the old Thar Ghars system. Now, the power of Mukhtiyarship was transferred from the royal family to a courtier. The old tradition of Thar Ghars came to an end. B.H. Hodgson was a keen observer of the politics of Nepal. In one of his despatches to his government in Calcutta in 1833, he described the powerful position of Bhimsen Thapa as follows:

> "... the Ministers ... has grown so great by virtue of two minorities (with but a short interval between them) and thirty years of almost uninterrupted sovereign's way, that he cannot now subsside into a subject, and is determined to keep the Raja a cypher, as in his nonage, both with respect to Power, and to observance as far as possible. Almost every post and office is filled by Bhimsen's creatures: he and his family monopolize all the loaves and fishes; very children ... of his kindred hold high commands; the ancient families of the Pandis, Bashniats, Boharas, Panths; Ranas and others, who in the constitution of the state are entitled to share its consuels and exercise its highest offices are excluded almost wholly from the one and other, besides being treated with habitual contumely by Mathabar Singh, Bhim Sen's overbearing and headless nephew."52

From this period began pure military oligarchilal system which led to the crippling of the civil and local-self government. Bhimsen Thapa became the strongest man of the Kingdom and dominated the arena of politics for thirty years. He brought into force schemes in which all important posts of civil and military administration were filled by the members of the Thapa family

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52. Resident B.H. Hodgson to the Political Secretary to the Government, Fort William, dated 18 February 1833, Foreign Secret Consultation (5 March 1833) 24, NAI. See also Kumar, op. cit., p. 26, f.n. 41.

and his followers. The Thar Ghars system which was continuing from the reign of Dravya Shah in a sense had thus been abolished.

The Bharadar and Bharadari in the first quarter of the 19th century became the shadow of the Mukhtiyars. Every person who became the Mukhtiyar began to appoint his own followers as Bharadars. The Mukhtiyar became more powerful by Lal Mohar and the King was overshadowed by them.[53] From this time the Bharadars became only the councillors of the state. The powers of this body were curtailed and it became an uneffective body. The reason is that after King Prithivinarayan Shah there was the struggle for power between the chiefs of selected castes who held charge of principal offices of the state under the predominance of a reigning King but the ruling minister became more powerful by securing Lal Mohar from the King. But later on, the King surrendered all his powers to his Junior Queen, Rajya Laxmi, by Lal Mohar of 1843 A.D. which clearly indicates dejure sovereignity of the Queen. This power resulted in Kot Massacre and the rise of Rana autocracy in Nepal for more than a century.

In fact, from 1769 to 1846 A.D., the King was powerful and ruled with the aid and advice of some members of the nobility. Throughout this period the King continued to perform some functions as the traditional head of the state. He used to hold Durbar on important occasions to consult civil and military officers or to make proclamations and announcements. The King was really the head of the government in this period. The King used to discuss important matters concerning the state affairs and the matters

53. Kumar, op.cit., p. 24.

relating to general administration were discussed in his presence. He was the final authority and gave directives for general administration of the state. No important state papers and legislative enactments[54] were deemed to be valid without his assent. So, as the head of the state, the King was the real sovereign of the State. But this position changed after the rise of Jang Bahadur.

(C)

A Century of Autocratic Rule : 1846 to 1951 A.D. (1903 to 2007 V.S.)

Coming to Power of Jang Bahadur :

The intrigues among the various functions of the Bharadars were responsible for the coming to power of the Ranas[55] in Nepal in 1846, who for more than a century ruled the country autocratically as de facto rulers.

The three important conspiracies favoured Jang Bahadur's fortune. The three conspiracies are : Kot Massacre (Assize at Kot) of 1846 A.D. (1903 V.S.); Bhandarkhal Parva (episode) of 1846 A.D. (1903 V.S.), and Alau Parva (episode) of 1847 A.D. (1904 V.S.).

54. Legislative enactments are Ain, Legal Instruments like Lal Mohar, Panjapatar, Ain, Sawal and Sanad etc.
- Also see : The documents collected by Itihas Patra Sangrah I, (Nepal Sanskriti Parishad, Kathmandu).

55. Rana title was conferred by King Surendra, See Lal Mohar I, Appendix 1. The Rana, originally Kunwar, declared themselves Rajput and registered in the Rajput Vamsavali at Chitor, India. In fact, in the time of Prime Minister Chandra Shumsher their names were registered and enrolled in the Rajput Vamsavali.
This view of the Nepalese historians is affirmed by the eminent social anthropologist Furer - Haimendorf who believes that Chhetri clan of Kunwars from which the Rana family has descended is lower than the Thakuris (to which the Shah and some other noble families belong). See: Christoph Von Furer-Haimendorf, "Caste in Multi-Ethnic Society of Nepal", Contribution to Indian Sociology (Paris), 4 (April 1960), pp. 19-20: Kumar, op. cit., p. 33, f.n. 60.

The creation of "Tin Sarkar"[56] of royal family led to intrigues and counter-intrigues in the court. At that time there was split among the King, Junior Queen and the Crown Prince. "During this period due to the succession of weak Kings, monarchy weakened, petticoat influence increased, courtiers struggled for power, thus the political confusion paved way for the rise of the Rana family under the stewardship of Jang Bahadur, the innovator of the system."[56a] Power struggle or court intrigues among the Thapas, Pandeys and Basnets weakened them by their bloody revenge amongst themselves. The assassination of Mathbar Singh favoured Jang's fortune. He rose into power gradually from a Captain, a minor military officer to the position of a Kazi, a minister for military affairs. Taking the advantage of being a military officer he entered into the court politics and got chance to maneovour the military and civil officers of the country. The Palace politics was not favourable to the Crown. So, he began to play court politics, which resulted into Kot Massacre in 1846 A.D. (1903 V.S.). The assasination of Gagan Singh, the most influential member of the

56. By this three members of the royal family, had come into predominance each exercising his or her authority without the comment of another. This created a confusion in so far as the essure of sovereign authority was concerned conspiratorial politics. Kind was the de jure sovereign, Queen exercised the executive powers as delegated by the King and the Crown Prince wished to exercise the authority on being an heir-apparent. Thus Nepal has three governmental authorities. Henry Ambrose Oldfield, Sketch from Nepal, 2 Vols. (London, 1880), pp. 327-30. See: Pudma Jung Bahadur Rana, Life of Maharaja Jung Bahadur, (Allahabad, 1909), pp. 32-36, Sylvain Levi, Nepal, Vol. 3, (Paris, 1905-8), p. 366; Kumar, Ibid., p. 31; cf. Hunter, The Life of Brian Hongton Hodgson.

56a Agrawal, op. cit., p. 32.

Council of State led to the violent tragedy in the Kot. In the Kot Massacre Jang Bahadur wiped out prominent members including the Prime Minister and other dignitaries from Thapas, Pandes and Basnets. After the Kot Massacre, Jang Bahadur was appointed the Prime Minister and Commander-in-Chief with full authority by the Regent Queen Lakshmi Devi (Rajya Lakshmi Devi).[57] Now, the powers of the court came in the hands of Jang Bahadur, his family members and his followers. The massacre made the Ranas all powerful and led to the continuity of Jang Bahadur's family in power.

Now, the remaining courtiers after the Kot Massacre specially the Basnets, decided to help the Junior Queen, Laxmi Devi in conspiring against Jang Bahadur. They wanted to make her son as the heir apparent. But the plan was exposed and the remaining prominent officers were killed on the night of October 31, 1846 A.D. at Bhandarkhal. As its result all the political powers as well as the status of the Regent was taken away by Jang Bahadur from the Queen, and she was taken into custody. Now King Rajendra appointed Jang Bahadur as Prime Minister with additional honours and titles.[58] Then, the powerless King Rajendra Bir Bikram Shah left for Vanarasi followed by his Junior Queen. The King had bestowed his powers

57. 15 September 1846 A.D. The Queen appointed Jang Bahadur as Prime Minister and Commander-in-Chief and he presented to her his 'Nazarana' of acknowledgement. Later on, in the Primership of Chandra Shamsher, the Prime Minister of Nepal became not only the Maharaja but also the Supreme Commander-in-Chief till 1951.

58. King Rajendra as the de facto sovereign reappointed Jang Bahadur as the Prime Minister and Commander-in-Chief of Nepal.
See : Lal Mohar II, Appendix 1.

(Hukum) to the Crown Prince Surendra Bir Bikram Shah Dev to rule the country as his Regent. Later Jang Bahadur declared the abdication of King Rajendra with the consent of Bharadari on charge of having conspired against the state, and proclaimed Surendra Bir Bikram Shah Deva as the King of Nepal on May 12, 1847 A.D. and informed the British and Chinese Governments of the change.

The deposed King Rajendra and some self-exiled members of Chautariya, Thapa, Pandey and Basnet families, the Rajguru and members of the royal family and some followers met at Varanasi. The persons promised their allegiance to Rajendra as the King of Nepal and decided to conspire against Jang Bahadur. The self-exiled King Rajendra with his followers came to Alau in the Terai region, and tried to win over the military and civil officers. Jang Bahadur's army entered Alan and defeated the followers of Rajendra. The former King Rajendra Bikram was arrested on July 28, 1847 A.D. on the charge involving 'lese majesty' (high treason). He was taken to Kathmandu as a prisoner and had to spent remaining part of his life at Bhadgaon Durbar under close surveillence. Due to these three episodes Jang Bahadur became undisputed master of the country. The King granted him three Lal Mohars by which the Ranas became Shree Tin Maharaja[59] and de facto rulers of Nepal for one hundred and four years.

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59. See: Lal Mohar III, Appendix 1.
From 1856 A.D. the Rana Prime Minister (Sree Tin Maharaja) also began to write his 'Eulogy (Title) on Dui Chappe (prime Minister's Seal or Stamp) like "Swasti Sree Tin Maharaja Madati Prachanda Vhujadandatytya ... Prime Minister Supreme Commander-in-chief... .

Jang Bahadur framed regulation (Role of succession) with an intention to pass on the Prime Ministership (Sree Tin Maharaja) as well as other important offices of the state to his brothers and descendents in opportunity.[60] It has been mentioned in the second Lal Mohar granted by the King on 6th August 1856 A.D. to Jang Bahadur that as he had saved the life of the King and the members of the royal family, he was being granted the title of Sree Tin Maharaja (Prime Minister) and rulership of Kaski and Lamjung as a reward. By the same Lal Mohar it was fixed that the person next to succeed as the Prime Minister would have the designation of Mukhtiyar (Chief Saheb) and the rule continued till 1951 A.D. (2007 V.S.). The administration was thus made hereditary property of the Ranas whose ranks and positions were determined on the basis of seniority.[61] William Digby remarks:

> "It was Maharaja Sir Jung Bahadur who, with the assent of all the Estates of the realm, introduced a Constitution, which, while it upheld the dignity and supremacy of the Crown, at the same time curtailed the power of the Sovereign by vesting all executive authority in the hands of the ministers. This Constitution also regulated the order of succession to the premiership."[62]

In the Rana hierarchy, the head of the family was the Prime Minister, Sree Tin Maharaja, who centralized in himself all civil and military powers. The scope of his jurisdiction, executive, legislative and judicial remained mostly undefined and he ruled the country more or less like an absolute despot.[63]

60. Baburam Acharya, "Rana Shahi ra Shadyantra" (Rana Rule and Conspiracies) (Art.), Sharada, XXI, No. 5 (Kathmandu, 1957). Acharya, "Jasko Talwar Usko Darbar" (Art.) Sharada Kathmandu, 2014 V.S.), 22, No. 2, pp. 1-5.
61. Raj Kaj Ain and Babu Bajyeko Ain.
62. William Digby, C.I.E., Nepal and India; A Friend in Need, Friendship Forgotten 1857-1887 (An Episode in Indian Foreign Office Administration(London: 1890), p. 80.
63. Gupta, op. cit., p. 14.

The period from 1846 to 1951 A.D. (1903 to 2007 V.S.) is the most important period in Nepalese history. This period is marked by two important characteristics. First, the Ranas ruled over Nepal for one hundred and four years. It was a family rule without having legimate claim to power. Secondly, the Ranas ruled dictatorially to realize their own vested interests. Nepal remained throughout this period under a feudal autocratic-oligarchic regime. The political power was precariously poised between the King and the Prime Minister. The King held de jure and the Prime Minister de facto powers. After 1857 the whole power of the state came in the hands of the Prime Minister (Sree Tin Maharaja). In fact, from this time onwards the King merely performed some functions as the traditional head of the state. He used to hold Durbars on important occasions, making proclamations and announcements, or receiving foreign envoys, signing important papers and legislative enactments. The King became only the symbol of unity and the centre of emotional loyalty of the people.[64] He was treated with outward respect, but with the politics and management of the country he appeared to have no concern, nor was he even consulted regarding them.[65]

Thus, the King of Nepal had been forced to transfer complete de jure sovereign powers to the Rana Prime Minister. Besides, the King himself came under the de facto control of the Rana Prime Minister and remained so till 1951. The Rana Prime Minister became a peculiar institution of the Rana political system which can be

64. Kumar, op. cit., p. 57.
65. Major G. Ramsay, Resident to G.F. Edmonstone, Secretary, Government of India, Foreign, dated 30 June 1857, Foreign Secret Consultation, (25 September 1857) 471, NAI ; Kumar, Ibid., p. 61, f.n. 61.

compared to the Kings before the coming into power of the Ranas. It combined the functions of a Prime Minister and those of the King having full sovereignty over the whole of Nepal. As the head of the government he became the source of all authority and the entire governmental machinery was responsible to him directly. He ruled the country as his personal estate and derived maximum personal benefit out of it.

The King's Red-seal (Lal Mohar)[66] was necessary to give a document an official value, and these seals had given the Rana Prime Minister full power to governm the state.[67] According to these seals the Rana Prime Minister had the right to declare war, to make peace and to control the domestic arrangements of the state with full military, judicial and civil authority in all cases. The Prime Minister became so powerful that he controlled the whole internal and external affairs of the state. Again he had full authority to appoint, to dismiss[68] or to punish or even sentence to death those who disobeyed him and the members of his

66. Lal Mohar (Red Seal) represents the sovereignty of the King. Lal Mohar confers Title, Honours, Offices, Jagirs, Ain, Sawals. See Appendix 1,2,3 ; Photo Print No. I and III.
67. After granting the Lal Mohars to Jang Bahadur, the convention has been established to grant and entitled to every successor such type of Lal Mohar till 1951.
68. Rana autocratic government established a system of 'Pajani Pratha' (Promotion, demotion and other appointments) to all i.e., from Mukhtiyar to Rana family members and to other civil and military officers of the state. For the Rana family members, there was 'Thamauti Pratha', i.e., the Prime Minister shall give his approval on his own discretion to his successor and to other members of Rana family and for others by Pajani Pratha every year.

family. When a Rana became the Prime Minister he began to rule the country despotically and claimed to be the ruler in accordance with the traditions, usages and practices of his forefathers. This system of government was purely an autocratic oligarchic system and the three organs of government executive, legislative and judicial came under the supervision of the Prime Minister. The judiciary was not an independent body. Law and justice depended on the sweet will of the Prime Minister. In fact, the country was governed with the Sanad and Sawal by Lal Mohar and Panjapatra[69] granted by the King of Nepal. Jang wanted to modernize the army, administration, law and justice. After his return from England and other European countries,[70] he implemented Laws (Ains) for the goverance of the country which are known as Gaddi Ko Ain, Mulki Ain, Raj-Kaj Ain and Jangi Ain.[71] These documents enable

69. After the abdication of Deva Shumsher, Chandra Shumsher took Panjapatra from the King in 1901 A.D. Panjapatra is the second important documents for the Rana Prime Minister after Lal Mohar. Panjapatra means 'an order or communication issued under the palm-print of the King. This paper was palm-printed by crimson colour in the Nepalese paper with all the lines which we can get in the Lal Mohar'. From the time of Chandra to Mohan Shamsher such type of Panjapatra was granted by the King to the Rana Prime Ministers, Sree Tin Maharaja.

70. Hemraj Guruju's Vamsavali, Rastriya Avilekha, (Kathmandu), p. 47.

71. Many important acts were promulgated in the time of Maharaja Jang Bahadur to safeguard his position. These acts safeguarded the rights of the Ranas. Among them the following acts are important. Gaddi Ko Ain means the act relating to the throne. Nepalko Mulki Ain means Laws of the Realm). In the history of legal Code of Nepal, at first, King Surendra Bir Bikram Shah Dev had implemented 'Nepalko Mulki Ain' in a written and compiled form in the year 1853 A.D. (Paoush Sudi 7, 1910 V.S.). This Code was approved by the Bharadars in the Primeership of Maharaja Jang Bahadur Rana. Another Act, Raj-Kaj Ain came into force. This Act established rules and regulations for the King, members of the royal families, Prime Minister and the members of Rana family. Every member of the royal family should function according to rules and regulations and every Ranajis should respect the King as their master and other members of the royal families as 'Malika'. The members of the

(continued on next page)

us to understand the scope and extent of the functions of the King, members of the royal family, the Prime Minister and other members of the Rana family. Referring to the scope of the Prime Minister's functions, Pudma Jung wrote about Jang Bahadur:

"The Maharaja's work was not confined only to initiative in legislation, as is the case with that of the Prime Minister of Great Britain; it was not only limited to control and superintendence, not only to sanctioning and signing, but it also comprehended all those minute details of execution and accomplishment which fall to the lot of a hoary patriarch of a huge family."[72] He was the head of the state and of the society in the real sense of the term. As the head of the administration he was the source of all authority and the entire governmental machinery was responsible to him directly.

This was a period of pure autocratic rule of the Rana Prime Minister. The administration of the country was characterised by secrecy and intrigues. The wide scope of the activities of the Prime Minister and the various channels through which he exercised his powers made him totally despotic. There was no written Constitution[73] at that time and he was all in all in all affairs of the

(continued from previous page)
Rana family has no right to do anything as they like nor they can take part in any business or other ways of money earning jobs. If they make mistake, the Prime Minister has full authority to punish them. Lastly, Jangi Ain means the act relating to the Armed Forces. According to this, the Prime Minister is the Supreme Commander in Chief of the Armed Forces and he has full authority to control the army. - These documents were seen by the author in the Ministry of Law HMG/Nepal. See also: Sambhu Prasad Gyawali, Towards Better Legal Order (Kathmandu, 1969), p. 3.

72. Pudma, op. cit., p. 275.

73. When the author had interviewed with Yogi Naraharinath, he told that in 1909 Maharaja Jan Bahadur had formed one Constitutional Committee to amend the laws of the country. In 1910 V.S. the Committee had prepared the Constitution in his sense and the law of the country had been divided into five parts. Then for the smooth working of Rana autocartic government, he had divided the state into fifty-two administrative departments.

State.

Rana Administrative System :

Though the form of government, in general, was enormously centralized under the autocratic hereditary Rana regime, Ranas took a keen interest in the organisation of the administrative system in Nepal. Satish Kumar writes :

> "The Rana administration inherited from pre-Rana times some features traceable to the Mughal administrative system in India. These features related to general structure of the central government, distribution of functions between various departments, nomenclature of the departments, legal terms in vogue at the courts, etc. ... Besides, there was an essential similarity in some respect between the nature of the Mughal and the Rana administrative systems. Thus, the Rana administration was as autocratic and monolithic as the Mughal. ... ... Like that of the Mughals, the scope of activity of the Rana Government, particularly during the period under study, hardly extended beyond the maintenance of the army and the collection of revenue. .... Further, the British Government had some impact on the administration."[74]

Maharaja Jang Bahadur had codified all the laws, acts and regulations of the government which were popularly known as '<u>Sanad</u> and <u>Sawals</u>'[75] of the time of Prithivinarayan Shah. To these <u>Sanads</u> and <u>Sawals</u> other rules and regulations were added from time to time till 1951 A.D.

The Rana Prime Minister stood at the apex of the hierarchy. "A characteristic that distinguished the Rana administration from the earlier ones was the existence of a powerful oligarchy hedged between the King at the top and the lesser civil and Military officers at the bottom. This oligarchy comprised leading members of the Rana family who exercised real control over the King as

74. Kumar, op. cit., pp. 90-91.
75. Sawal means Act and Sanad means legislative cum executive documents.

well as on the administration. Withing the oligarchy, each member was subservient to his immediate superior and all together were subservient to the Prime Minister."[76] The Rana Prime Minister was the dictator, absolute and autocratic, in the real sense. He exercised himself the executive, legislative and judicial powers. He made laws in the name of the King and administered in accordance with those laws as far as possible.

The Prime Minister was the chief executive and in this capacity he alone had the power of partonage which extended to all civil and military offices by roll of succession and Pajani Pratha.[77] The executive work of the Prime Minister included control of various departments of administration, foreign and other offices. He was the final authority to execute his decisions by Khadga Nisana.[78] He had also the power to declare war, or to conclude peace and to make agreements or treaties. The Munsi Khana (foreign office)[79] was under the supervision of the Prime Minister.

76. Kumar, Ibid., p. 95.
77. Annual reshuffle or renewal of the governmental functionaries on the basis of confidential reports.
78. Khadga Nisana means orders on which the Khadga Nisana (Sword Initial) by his own hand seal was to be affixed were issued in the presence Sakshi (witness) of the Mukhtiyar and Hakim (Officer) of the Khadga Nisana Adda (office). It was affixed on documents concerning the following matters: (a) enactments, amendment and repeal of laws; (b) approval of memors (memo sadar); (c) delegation of powers to the Mukhtiyar; (d) permission for gambling; (e) Birta grants in favour of the Prime Minister; and (f) all appointments, transfers and promotions etc. The office functioned as the Prime Minister's personal office. All documents were countersigned by the Mukhtiyar (Chief Saheb) and other authorities of the office. The office had a Hakim, a Kazi, a Sardar, A Subba, a Sakshi and other officers.
- Badakaji Manikalal Rajbhandari, Note on Rana Haruko Nijamati Prasasan Pranali, p. 23; Agrawal, n. 36, p. 100.
Describing the Khadga Nisana Seal, Badakaji Maniklal Raj-Bhandari writes in his book that, "It was a seal bearing a sword or trident or arrows on top and the abbrevisted signature of the Prime Minister". See Photo Print No.VI.
79. Munsikhana Adda (Foreign Office) which was established by King Prithivinarayan Shah was retained by the Rana Prime Ministers.

The Rana administrative system was divided into two parts: (1) Central administrative and (2) District administrative system. The Central administration connots general administration. The existing departments, Kumari Chowk (an account and audit office), Hulak Adda (General Post Office), Kausi Tosakhana (National Treasury) and Munsi Khana (Foreign Office) which were established by King Prithivinarayan Shah and Prime Minister Bhimsen Thapa were retained.[80] But Jang Bahadur tried to modernize the mikitary and general administration, Law and Justice, and the Postal system after his return from England. After Jang Bahadur, Ranoddip Singh became the Prime Minister. He was a good administrator and a reformist. William Digby writes :

> "As an administrator Sir Ranadip Singh was the author of many domestic reforms, the carrying out of which largely added to the material prosperity of Nepal. Some of these reforms may be instanced. The enumeration of them will indicate the high-minded principles on which the affairs of Nepal were conducted."[81]

In his time many reforms were made, like the Reform of the Land Settlement, Financial Reforms, Organisation of a Public Works Department, Establishment of Banks, Reforms in the Criminal Law and in the Administration, Reclamation of waste Lands, etc. Later on Top Khana (Store House to keep guns) and Mulki Khana (Central Treasury) were established. The central administration connots General Administration, Kausal (Council) and Ain Khana (Law Department). The District Administration was under the supervision of Badahakim (Governor).[82] The District administration connots

80. Agrawal, op. cit., p. 63.
81. Digby, op. cit., p. 80.
82. The Kingdom of Nepal has been divided into three divisions: Central Administration, Pahar division and Terai division. The country was divided into 35 (Terai divided into 12 Jillas and Pahar was divided into 23 Jillas), each being administered by a Subba or a Hakim later on known as Bada Hakim. He shall be appointed by the Prime Minister.

Gaudda and Goswara (district office in the hills and district office in the Terai), Mal Adda (Revenue office), Army, Adalat Adda (Court office) and miscellaneous Adda (offices).

The central administration was under the supervision of the Prime Minister of Nepal. In the general administration there was Mulki Adda (Home and General Administration), Ain Khana (Law Department), Jangi Adda (Defence Department), Top Khana, Mulki Khana and Jaisi Khana (Name of the Tibetan section of the Foreign office). In the time of Ranadip, he introduced in the Mulki Adda two sections i.e., the Pahad and Madesh Bandovasta (Hilly and Terai sections).[83] Later on in the time of Bir Shumsher Khadganisana Adda[84] (executive order office of the Prime Minister) was established. This office became the most powerful because the Prime Minister began to give his final approval on any memos from this office. The Khadganisana seal was valid and all the offices of the Kingdom of Nepal had to accept and trust the Khadganisana letter sent by this office affixed by the Prime Minister of Nepal.

In the financial matters, in accordance with the despotic character of his office he had full control, and he could levy taxes or abrogate the old ones[85] Mulki Khana (National Treasury)

83. In this way, Mulki Adda has been divided into two sections: Pahar and Madesh Goswara section. Goswara means Headquarter of a District. The Badahakim used to keep contact with the concerning office of the center.

84. This office was established in the time of Prime Minister Bir Shumsher. See : f.n. 57.

85. The Rana Prime Minister can levy taxes or revenue, declare the land as Birta, Raikar, Kipata and other kinds of land. He shall appoint the Zamindar, Subba, Badahakim and other various officers to collect the land taxes. Such type of announcements should be made by Sanad sealed by Dhulo Chapand Puchara (sealed by Prime Minister and Mukhtiyar) and signed by various other high officials of the government. See: Duee Chapee, Photo Print No. V. and Eka-Chappe, Photo Print No. VII.

was under the full control of the Rana Prime Minister. Kumari Chowk Adda was reorganized in a number of sections concerned with audit and accounts of the government. The credit for financial reforms goes to Prime Minister Ranadip Singh."He established for the first time an efficient system for the collection of the national revenues, and founded a system of audit of accounts. In former times the fiscal officers of the state were virtually irresponsible agents, they are now subject to a close system of supervision and scrutiny and defalcations are hardly known."[86]

In the legislative field, he had the power to promulgate law He was the final authority to put stamp (Khadganisana) of approval on the laws passed by the Kausal (Council).[87] The Bharadari or the State Council (Kausal) were now composed of Rana's henchmen.[88] In the Rana period, these were composed of both civil and Military officers -- upto the rank of Meer Subba in civil and of the rank of Major in the military. This body had right to approve, give suggestions for modification, or to amend the acts and regulations of the government of Nepal. It was this body, which had approved of the regulations, tabled by the Prime Ministers to secure the abdi-

86. Diby, op.cit., p. 80.
87. Impressed with the British Parliament, Maharaja Jang Bahadur decided to establish such type of Assembly in Nepal after his return from England. Then he established a Council as the Nepali began to call it as a name 'Kausal' in 1851. Later on, was known as Kausal Adda.
88. Maharaja Jang Bahadur had established a Council named Kausal in 1851. The strength of this Council was 230 in the time of Jang Bahadur. Later on, this Council was composed of 370 members.
- Subba Buddhiman Singh's Vamsavali, Rastriya Avelekhalaya, Kathmandu; Jang Bahadur's Ain, Library of the Ministry of Law, HMG (Manuscript).

cation of King Rajendra Bikram and King Tribhuban and to proclaim Surendra Bir Bikram and Gyandera Bir Bickram as the Kings of Nepal in 1847 and 1950 A.D. respectively.[89] The 'Nepalko Mulki Ain', of 1853, and the abolition of Slavery and Sati Pratha were also the work of this body. All laws were issued in the name of the King and therefore the Lal Mohar had also to be affixed in addition to the Bhahuli Nisan (Signature of the Prime Minister) and Dastakhat (signature) of other high officials of the state.[90] But in reality the Prime Minister had the supreme ligislative power.[91]

In the judicial field, the Lal Mohar guaranteed that the Prime Minister could fine, imprision, put to death or treat in whatever way he liked those who disobeyed him.[92] The judiciary was not an independent body at that time. There were two sets of laws: one relating to the Rana family known as Raj Kaj Ain and the other, Nepalko Mulki Ain for the people in general. But some reforms in the judicial field were also implemented in this period. In course of time a graded system of courts was established: Ain Khana, General-in-Bharadari, Bintipatra Mamila Nicksari, Appeal Adda and Pradhan Nyayalaya.[93]

89. Resolution tabled by Jang Bahadur in 1847 and by Mohan Shumsher in 1950 A.D. by Kausal and Bharadari.
90. See : Photo Print No. III and VI.
91. As the supreme legislature, it was he who alone could decide enactments, amendments and repeal of Ains, Sawals and Sanads.
92. The Lal Mohars have guaranteed three rights to the Prime Minister but the convention had been established that for the life punishment or to put to death Lal Mohar was compulsory.
93. These are the various courts under the Rana administrative system.

Under the Ranas, the judicial system was enlarged. Jang Bahadur and Ranoddip Singh did not change the pre-Rana judicial organisation but Bir Shamsher made far reaching changes in 1887 and again in 1901.

As a result of these changes, the Rana Prime Minister became the highest court of justice with the right to hear appeals from all the other courts in the Kingdom. Below him was the General with Bharadars. But at time, the Prime Minister used to decide cases without the assistant any judicial officers.

During the lattor Rana period there were some officers like Bada Hakims, Mukhiyas etc., and also Caste Panchayats, which also performed judicial functions. But these were outside the court system.[94] Coming to the judicial organisation proper, at the lowest level there were 69 courts all over Nepal known as Adalats in the hills and Amini courts in the Terai areas. These courts have both criminal and civil jurisdiction. Above these were some Appeal courts, two of which, were in Kathmandu. One of these look after the criminal jurisdiction and the other after the civil. Over these courts there was the General-in-Bharadari as the high court of Appeal but later on it was replaced by Bintipatra Niksari. Some changes were made in the time of Juddha Shamsher most important being the establishment of Appeal courts in the districts and a High Court (Pradhan Nyayalaya) in the Capital.

Jang Bahadur had established another judicial body named as 'Dharma Kachahari'[95] in 1870. It was a special court for anti-

94. Rose and Fisher, op. cit., p. 84.
95. Hemraj's Vamsavali, Ibid.

corruption. The purpose of this court was to try cases of bribery, corruption, maladministration and violation of law by the officers of all ranks from the Prime Minister downwards. But Ranadip Singh abolished this court in 1887 A.D.

The district government under the Ranas performed executive and judicial functions. Its executive functions mainly included revenue administration and maintenance of law and order. The district administration of Nepal was administered by the Bada Hakim and Hakim in the Terai and Hill districts respectively. Bada Hakim was to be appointed by the Prime Minister and the subordinate officials were appointed by the Bada Hakim subject to the approval of the central government. The main functions of the Bada Hakim were to maintain law and order in the district, protect the district treasury, and to collect the revenue of the district according to the rules and regulations circulated by the centre.

An Assessment of the Rana Administration :

The Rana Prime Minister could do anything to satisfy his personal and political whims and to maintain himself in power. Nobody could do anything and no important decisions could be taken without the approval of the Prime Minister. He was supreme not only in political and governmental fields but also in social and religious spheres.

In fact, as there was no written constitution this fact facilitated the concentration of all powers in the hands of the Prime Minister (Sree Tin Maharaja). Every Prime Minister used to get a Panjapatra from the King of Nepal granting him full authority on behalf of the King. The Office of the Nepalese Prime Minister

in the Rana period, thus, acquired a unique position and became the very foundation of the entire political system. It combined the functions of a Prime Minister with those of the King having full sovereignty over the people of Nepal. The Prime Minister occupied the highest and central position in the governmental structure. He was the main spring of political power. On the desire of the Prime Minister his office devolved on the next person in the line of succession as laid down in the genealogical table[96] of the Rana family. As the head of the administration, he was the source of all authority and the entire governmental machinery was responsible to him directly. "Jang Bahadur laid the foundation of Rana autocracy in Nepal and laid down the legal, militaristic and administrative foundation, Chandra brought the system to the apex of its consolidation and Juddha Shamsher tried to modernize.it."[97]

The form of government in the Rana period remained extremely centralized and totalitarian throughout. There was no popular participation in the process of government. The policy of the Indian government of the time was to maintain Rana autocracy and discourage any constitutional reforms. In fact, the extreme autocratic regime was controlled by the British Government in spite of

96. Maharaja Jang Bahadur introduced a genealogical table of Kunwar Rana family members to succeed to that post. But after his death, the genealogical table was reorganized three times by Maharaja Bir Shansher, Bhim Shamsher and Juddha Shamsher with the approval of the members of the Rana family. These versions had been made. As a result the Rana family members were divided into 'A', 'B' and 'C' classes.

97. Agrawal, op. cit., p. 81.

the claim made by the Ranas that Nepal was an independent state with full sovereign power.[98] The British government was the real maker and unmaker of the government of Nepal. With the help of Britishers, Rana Prime Ministers became dictators and despotic and remained so far one hundred and four years. No doubt some Rana Prime Ministers tried to be liberal and reformist, but they were either murdered or had to abdicate under pressure. In his speech while promulgating the Government of Nepal Act 2004 V.S. (1948) Padma Shamsher had stated :

> "It is not a fact no attempt was made during this long period to associate the people with the government in the administration of the country, but all such attempts failed because the time was not yet ripe. For example, a Parliament Cutchery was established in Basantapur in the year 1851. The government of the day was so enamored of the British system that it desired to introduce the same kind, of parliamentary institution here, in which the people's will might find expression. But the people showed energetic disapproval, because they thought that Nepal which had previously been brought to the verge of catastrophe by the multiplicity of the leadership was again being led on the same path in imitation of foreign manners and customs. The experiment to introduce parliamentary institutions had perforce to be dropped. Again in 1918 an attempt was made in the same direction with the introdu tion as a first step of the electsive system in the municipality of the capital. But there was much disorder in the city during the election, and communal quarrels and breaches of peace occurred among the city dwellers, who had been living heretofore in peace and mutual cooperation, and so the election had to be abandoned, and an arrangement had to be made for the selection of members by the government in order to carry on the municipal administration."[99]

98. Till 1923 A.D. Nepal has been mentioned by the British Government as a 'Native State' - See, Pioneer Weekly (London, 1901). In 1923 A.D. Nepal was recognized as a sovereign state. The title His Majesty the King of Nepal was conferred on Maharajadhiraja of Nepal and that of His Excellency on the Maharaja of Nepal (i.e., the Rana Prime Minister).

99. Maharaja Padma's Speech, Infra, Chapter II ; Amson, J. Peaslee,. Constitutions of Nations, Vol.II, (Washington, 1948), p.505.

Ranoddip had also tried to reform but he was murdered.[100] Deva Shamsher had expressed his desire to reform and change the social life of the Nepalese people and he wanted to remove the social evils from the society. He had tried his best to bring reforms in national life and general administration also. He occasionally invited suggestions from the public about the reforms and heard their needs and requirements sympathetically.[101] At one time he appealed to the people to become bold and offer criticism of his administration. He had also decided to establish a Council of the people's representatives. He had kept a letter-box in which suggestions to the King and the Prime Minister could be put by the people. He even entertained the idea to give the King a share in the administration. He also wanted to introduce changes in the existing rules in order to enable the people to participate in the government.[102] With the consent of the British Resident, Deva Shamsher had invited some constitutional advisers and experts from Great Britain. He had also made a request to the British authorities in Calcutta to give the approval to invite German and French constitutional experts to draft a constitution for Nepal, but that was refused. In Nepal, his brothers and courtiers considered these measures as premature.[103] The result was that the Rana Prime Minister Dev Sham-

100. Coup d' etat of 1885 A.D. See also the Editorial of Gorkhapatra '<u>Baidhanika Sudhar</u>' Vol. 47 No. 42.
101. Maharaja Deva Shamsher had kept a letter-box in which the people could put their suggestions for improvement and they could take part in the general debate which was to be held in the presence of the King at Goal Baithak, Thapathali, residence of the Prime Minister Deva Shamsher.
102. See; Regmi, op. cit., p. 119, Sharma, op. cit., p. 353; Bhandari, op. cit., p. 295.
103. Pioneer, op. cit., July 4, 1901, p. 33.

sher, who wanted reforms did not succeed and had to abdicate.[104]

> "These minor but progressive gestures struck terror in the hearts of the other Shamshers, who feared that the new Prime Minister was undermining the regime, and thereby their chances of the succession, by awakening public consciousness. Deva's younger half brothers forced him to abdicate at gun point after about four months of rule and banished him to Dhankutha, in eastern Nepal. The leader of the coup, Chandra Shamsher, then became the fifth Rana Prime Minister."[105]

Chandra Shamsher held the office by the Prime Minister for twenty nine years and governed despotically though he made some reforms in the administration. He also formed a body under the Chairmanship of the Commander-in-Chief (Chief Saheb), Bhim Shamsher, after his return from England in the year 1919 A.D. An attempt was made in 1918 in the same direction with the introduction for the first time of the elective system in the municipality of the capital. Prime Minister Juddha Shamsher had also made some reforms in the administration and had taken a bold step for the economic development in Nepal. But there was no move for constitutional reforms in Nepal. After the Second World War when great political changes took place in many countries of Asia and Africa, Nepal was also effected, and political movement started there.

As a sequel to the movement, Prime Minister, Padma Shamsher announced that he would be willing to introduce far-reaching political reforms in Nepal.[106] He declared that he would form a Constitutional Reform Committee to suggest changes in the Administration. It would be 'an assembly of elected and nominated members'.[107] The

104. June, 1901.
105. Joshi and Rose, op. cit., p. 47.
106. Prime Minister Padma Shamsher's Address before the public at Bisalnagar Durbar, 13 February, 1947. Gorkhapatra, Vol. 46, No. 91.
107. Ibid., p. 1.

Committee submitted its report to the Prime Minister. The draft Constitution was mostly based on the Government of India Acts of 1919 and 1935.[108] He also invited in June, 1947, a panel of Indian legal and constitutional experts to visit Nepal and to help the Reform Committee.[109] "Though it was a democratic step, the Committee had no popular representatives. All the members of the Committee were die-hard Ranas and their staunch henchmen."[110] For six months the Committee deliberated and prepared a draft which was submitted to the Prime Minister Padma Shamsher for his final approval. The new Constitution was announced and was to be implemented on the Nepali New Year Day. This was the first Constitution of Nepal. A detailed analysis of this Constitution will be made in the following Chapter.

(III)

Attempts of Political Organisations :

This chapter attempts to conceptualize the political system, identify its roles and functions and to describe the process of political modernization and development in the Kingdom of Nepal till 1950. Modernization generates pressures for political parti-

108. "In fact, the powers and functions of the legislature are generally of the nature conferred by the Government of India Act 1935" - See, Prime Minister Padma's inaugural speech; Poaslee, op. cit., p. 507.
109. The Government of India sent two experts Sri Shree Prakash, a member of the legislative Assembly of U.P. and Sri Raghu Nath Singh, Dean of the Faculty of Law, Lucknow University.
110. Regmi, op. cit., p. 198.

cipation. In the social setting of Nepal, Political activity in a group was bound to be underground and any attempt to overthrow the established regime was bound to be violent. Myron Weiner has said that :

> "One of the most disruptive crises in modern times has been caused by the efforts of those not in power to gain access to power or to influence decisions made by the governing elites."
> Again, he says that :
> "the transformations from monarchy to republic, from colonial rule to independence, from non-party to party system, from limited to universal adult franchise, and from limited to universal adult franchise, and from dictatorship to democracy have all meant new relationship between the citizen and the state and new forms of political participation."[111]

Weiner's model may be adopted to explain Nepalese political activities of the 1768 - 1950 period by an individual or in a group.

Politics during the pre-Rana period (1768 - 1846 A.D.) was based on court intrigues for which the Kings were no less responsible.[112] In this period, the administration was carried on by over-domineering ministers or Prime Ministers who became powerful as much because of a succession of minor and imbecile kings as well as by power hungry and impetuous queens. The chatoic condition that prevailed became responsible for intrigues among courtiers and councillors alike. As a result the administrative system continued to be repressive in which any attempt at liberalisation

111. Myron Weiner, Political Participation : Crisis of the Political Process, Crises and Sequences in Political Development, Chap. 7, "Studies in Political Development", (Princeton, 1971), p. 159.

112. Kumar, op. cit., p. 143.

of a regime was likely to be equated with sedition. Notwithstanding such a feature attempts were made by ministers in the direction of codifying traditional administrative processes. The evidence of which can be found in official notices, letters and circulars all mentioned by different names according to current practices.[113]

Politics during this period was mainly related to Durbar intrigues of succession of Kings and power bearing or power grabing by different contendors. Politics thus became the court ballet in which no public outside the capital participated.

The politics of this period took the form either of personal intrigues or group intrigues. A description of such intrigues is given below.

(a) Personal :

Under the early Shah Kings, administration was based on simple delegation of royal powers to small groups of officials, the Bharadars, who constituted the court of Nepal. After Prithivinarayan Shah there was the struggle for power between the chiefs of selected castes - Thapa, Pande and Basnet - who held charge of principal offices of the state under the prodominance of a reigning King but the ruling minister became more powerful by securing Lal Mohar from the King. Power struggle among the chieftains weakened their own position. This politics of intrigues lasted over a century.

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113. Lal Mohar, Pahelo Mohar, Sanad and Sawal etc. About these documents mention has been made earlier. For details see Appendix

The courtiers, subsequent to bloody massacre at Kot, tried their best to end the supremacy of Jang Bahadur with the help of King Rajendra Bikram Shah as well as other members of the royal family. But the Ranas were successful in crushing their efforts and became undisputed masters of the country for over a hundred years.

The Kot massacre made the King only a *de jure* ruler of the state and the Ranas as the *de facto* rulers, who centralized the entire power under their family rule. Though Rana rule established law and order in the country, its overall effect made the political system out and out autocratic. At first, the only form of opposition which it faced came from among the members of the old nobility - the Chautarias, Thapas, Pandes, Basnets and the non-Rana Bharadars, including the King himself.[114] In fact their conspiracies were motiviated by revenge only, which had nothing to do with the idea of better government. Conspiracies were started against Ranas as early as 1851 A.D. It may be mentioned that from the beginning of the Rana rule until 1935, Kings, Princes and former courtiers were active participants in most of the attempts made to overthrow the Ranas, but all in vain.[115] Many reasons are ascribed to the failure of these attempts: Firstly, Nepal was not politically consciousness. Secondly, there was British supremacy in India and Rana government in Nepal was supported by the British Government. Thirdly, Nepali court politics had not favoured demo-

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114. Gupta, op. cit., p. 19.
115. For relevant details see : Collections of Hemraj *Vamsavali* and Subba Buddhiman Singh's *Vamsavali*; Regmi, *A Century of Family Autocracy*, p. 97; Sharma, op.cit., p. 354; Bhandari, op.cit., p. 305; Gupta, op.cit., pp. 2-22; Chauhan, op.cit., pp. 11-12; Joshi and Rose, op. cit., pp. 45-46.

cratic set-up in Nepal and because of lack of education, the general mass was ignorant of the developments taking place in other parts of the world. Fourthly, the socio-economic condition of the Nepalese people was not satisfactory. It has been alleged that since the time of Chandra Shamsher there had been a tacit arrangement between the Nepali and British authorities under which Indian 'Subversive elements' who sought refuge in Nepal were kept under survellance and even occasionally arrested and extradited to India by the Rana Government. The British government also recriprocated by imposing restrictions on anti-Rana activities in India.[116]

116. Subba Devi Prasad, Krishna Prasad Koirala, Dharanidhar Koirala, Thakur Chandan Singh, Raja Jayaprthivi Bahadur Singh, and some other Nepalese in India were the most outstanding persons trying to creàte a new social consciousness among the people of Nepal. Most of them, who were self-exiled in India, began to mobilize the Nepalese in India and talked of the evils of the Rana system and of the backward socio-economic conditions of the Nepalese people and demanded political rights. They had started Nepali weeklies from Varanasi, Darjeeling and Dehradun in which the real face of the Rana system was exposed. The Government of Nepal had made a request to the British Government to ban or restrict their activities.

Many Indian leaders like Jayaprakash Narayan, Rammanohar Lohia and others who were active participants in the Indian National Movement of 1942, were hiding in the Nepali Terai. British Government had requested the Government of Nepal to arrest them and asked that Mr. S.P. Upadhyaya and Mr. D.R. Regmi who had also participated in anti-British activities be handed over to it, but British Government could not utilize extradiction act against those Nepalese who were in jail. The Government of Nepal had requested the Indian Government that activity against it from India be checked. The Nepalese government handed over Mr. Jayaprakash Narayan and Mr. Rammanohar Lohia to the Indian Government, which in its term assured it that political activities from India against Nepal would not be permitted.

However, the zeal among politically conscious elements and young intellectuals, all of whom were fired by the need to bring about social and political modernization in Nepal continued unabated, despite the autocratic Rana regime. The main source of inspiration came from the socio-religious movement in India under the dynamic leadership of Swami Dayananda Saraswati. Some intellectuals like Madhav Raj Joshi and others, who were educated and inspired by the Indian socio-religious movement, sponsored socio-religious movement in Nepal to inspire political thinking among the people in general. They began social and religious movements by establishing an Arya Samaj, Literary Organising Committees, and publishing papers, pamphlets and magazines.[117]

On the other hand, the Nepalese intellectuals, either national of Nepal or of India started eulogizing Nepalese nationalism overtly or covertly and criticizing Rana autocracy. Their activities were mostly reflected by literary publications e.g., magazines like the Gorkhali (1920-22) of Varanasi, Gorkha Sansar (1925) and Tarun Gorkha (1927) of Dehradun, poetic and prose writings like 'Makaiko Kheti' (1905) of Kathmandu, 'Pinjarako Suga' (1917) 'Naivedya' (1920), Siksha Darpan and Nepalko Itihas etc.[118] However, these developments derived from individual efforts of men. They could not mobilize any force as such. Meanwhile, by 1931, the new elites, inspired by the political movements in India,

117. Joshi and Rose, op.cit., p. 55; Regmi, op.cit., p. 136; Ramji Upadhyaya, Nepalko Itihas Arthat Digdarsan (Banaras, 1951), p. 75; Sharma, op.cit., pp. 355-58; Bhandari, op.cit., pp. 305-9.

118. Joshi and Rose, Ibid., pp. 52-53.

decided to form a clandestine political organisation. They, however, failed in this, for the same reason that it was done on a personal basis by some interested groups of the Rana community[119] from political ambition.

(b) Group :

In 1936, a clandestine political party, 'the Praja Parishad' was sponsored under the inspiration of King Tribhuban. The main objectives of this organisation were to expose the wrongs of the Rana government through various kinds of movements and to establish a democratic government under the aegis of the monarch. With these aims the party spread awakening among the masses drawing lessons from epics like the Ramayan and the Mahabharat.[120] Attempt

119. Later on in 1931, an attempt was made to overthrow the Rana regime. But it consisted of belonging of two camps of Ranas. One protatogonists of Chandra Shamsher's sons, and the other in favour of the ruling Prime Minister Bhim Shamsher and his sons, including their near relatives and supporters. Each group it is alleged tried to superced the other and became popular in the eyes of the people. Thus, it would appear the organisation had no political programme but only a forum of desparate familial groups. It was a test of strength of the former Prime Minister Chandra Shansher's sons but nothing happened except some people were given ten years R.I. and Basanta Shamsher and Yagya Shamsher grandson who was in the roll of succession and illegitimate son of Bhim Shamsher were interned. This was so called 'Bam-Kanda' (Bomb Plan).
A second attempt to overthrow the Rana government was made by an organisation named Prachand Gorkha formed by some youngmen of Kathmandu, who had been inspired by the Indian Freedom Movement. But this too proved abortive.

120. "Tribhuvan Smriti Grantha", Tribhuvan Smarak Samiti, Kathmandu, (Patna, 2028), pp. 511-528. See: Regmi, op. cit., p. 59; Upadhyaya, op. cit., Sharma, op. cit., pp. 511-528; Muralidhar Bhattari, Nepal ma mera jail Jeevan, p. 3; Dhramaratna Yemi, Nepalko Kura; Jagat Bahadur Singh, Nepal Praja Parishad ko Samsipta Itihas, (Lucknow, 1951), p. 4; Tirtha Raj Tuladhar, The Constitution of Nepal, (Kathmandu, 1966), p. 7.

to spread dissatisfaction against the Rana autocracy was made by a local organisation named '<u>Nepal Nagarik Adhikar Samiti</u>'. In its attempt to expose Rana autocracy and to mobilize the people on a large scale, the party used a column in the "Janata" a weekly journal from Patna, Bihar.[121] Pamphlets exposing the weakness of Rana autocracy and its activities were distributed. But an act of betrayal foiled the plot. It was crushed in 1940.[122] In fact, the whole Rana period was marked by a series of conspiracies. Democratically-minded men could not stay in Nepal and they had to escape to India. For a long time, groups of exiled Nepalese had carried on a kind of anti-Rana agitation in India. Due to the stringent watch on them mounted by the British government they could not launch any active movement.[123]

It is generally agreed upon that the origin of political parties is closely bound up with the process of modernization and that the degree of the development of party system can serve as a useful institutional index of the level of political development.

In 1946, when the Interim Government was formed in India, the British position became weak in the Asian sub-continent. In 1947, India became independent and a new phase began in Asia.

And with the Interim government being formed in India, a new wave of enthusiasm came over the Nepalese leaders working in India. At the same time some youngmen formed the 'Akhil Baratiya Nepali

121. Chauhan, op. cit., pp. 21-22.
122. See: Gupta, op. cit., p. 27; Joshi and Rose, op. cit., p. 54; Chauhan, op. cit., p. 22.
123. Ibid.

Rastriya Congress' at Varanasi and elected an ad-hoc Committee.[121] This organisation held its conference in Calcutta on 25th and 26th January, 1947. Two other organisations merged in it and it emerged with a new name, The Nepali Rastriya Congress.[122] It infused new courage and confidence in the anti-Rana elements. They decided to launch a non-violent movement in Nepal and associated itself with mill-hands as well as the students demanding freedom of speech, representative government and social and political reforms. Big demonstrations were taken out throughout Nepal against the Rana regime. The demonstrators were arrested. India became independent at that very time. This change in the Asian sub-continent inspired the Nepalese leaders to go with a step forward for the political development in Nepal. This compelled the Rana rulers[123] to announce a limited measure of constitutional reforms in Nepal in 1948.

In August 1948, another party, the Nepal Prajatantrik Congress was formed in Calcutta with Mahendra Bikram Shah as its President. The supporters of the party were some among the 'C' class Ranas who, having been exiled in 1934, had been living in India. The main objectives of this party were to put an end the Rana regime and to replace it by a Constituent Assembly to be elected on the

121. Regmi, op. cit., p. 191.
122. Gupta, op. cit., p. 169.
123. The century old Rana autocracy also felt the need to move forward with some reforms as without some such step it felt, it could not continue in power for long. So, Prime Minister Padma Shumsher promulgated the Government of Nepal Act 2004 V.S.

basis of universal adult franchise.[124]

In Kathmandu also a new party 'the Nepal Praja Panchayat' was founded in October 1948 following Constitutional reforms in Nepal the same year. This organisation proposed to work entirely in accordance with the spirit of the Rana Constitution and it demanded its immediate implementation. The sponsors of the Praja Panchayat stood on three grounds:

(1) That they had only demanded a government by law, which was promised by the Constitution, and as the Constitution was devised and announced by the Rana rulers they had not made demands which, in any way, should embarrass the Maharaja.

(2) That they would abide strictly by all the provisions of the Constitutional Law.

(3) That they had nothing to do with the activities of the Nepal National Congress which has as its objective the immediate establishment of a responsible Government.

But the political activities of this party were not allowed and it was banned later on.[125]

124. The chief architects of this party were 'C' class Ranas who were in self-exile in India. Prominent were General Hirayna Shamsher, Suvarna Shumsher, Rudra Shumsher, and Mahabir Shamsher. They were attached with the King. These persons had tried in the time of Padma Shumsher to over throne the Chandra family and to rule the country on democratic lines under the aegis of the constitutional monarch. But this conspiracy failed due to the weak policy of Maharaja Padma Shumsher. Most of the exiled Ranas (specially the sons and grandsons of Maharaja Bhim Shumsher) fled from Kathmandu suddenly. Most of the leaders who were engaged in underground work also left Kathmandu, e.g., Surya Prasad Upadhyaya, Hora Prasad Joshi and others.

125. A young group of democrats of Kathmandu valley, Mr. Gopal Prasad Rimal, Tripubar Singh, Gopal Dass Shrestha, Vijaya Bahadur Malla and Surya Bahadur were the active members of this organisation. At that time actually, this organisation had no link with the Nepal National Congress but later on

As these parties pursued their separate goals in their own way, developments inside Nepal swiftly shifted towards a political crisis on account of the hard line taken by Prime Minister Mohan Shamsher.[126] This inspired the merger of the two parties, the Nepali Rastriya Congress and Nepal Prajatantrika Congress. There are some function and structural requirements which a political party must meet if it is to play a positive role responding to various problems of political development. But Nepal Rastriya Congress could not make such response. And most of the members of this party and of another party, the Nepal Prajatantrika Congress which was formed in 1948 at Calcutta, supported by an exiled Rana group, merged with each other at a conference in April 21, 1950. The new organisation was called 'Nepali Congress'.[127] Dilli Raman Regmi refused to accept this change and decided to quit the party along with his followers. The aim of the new party was to replace the Rana regime by a popular and democratic government under the aegis of constitutional monarchy. The government of Nepal never

(continued from previous page)
to come into contact with the Nepal National Congress for establishing a democratic set up in Nepal. Rana government who afraid of its activities, so the government banned the party, suspended the fundamental rights guaranteed by the constitution and new ordinances were enforced curbing all political activity. See: Regmi,op.cit.,p. 222 for aims and objectives of Praja Panchayat.

126. Prime Minister Mohan Shamsher had banned all political activities of Rastriya Congress inside Nepal and also did not recognize the activities of Praja Panchayat. Later on he promulgated an act 'Maulik Hak Sambhandi Ain 2005 V.S. Refer Ch. II, f.n. 133.

127. Merger of the two parties took place at Tiger Hall, Calcutta, April 9, 1950. For the joint statement of M.P. Koirala, President of the Rastriya Congress and M.B. Shah, President of the Prajatantrika Congress, See: Nepal Today, 12 and 13. Issue (March - April 1950), p. 1.

paid attention to this matter and banned political activities sponsored by the Nepali Congress throughout the country, as also the activities of the Rastriya Congress towards the end of 1949.[128] Then the party decided on an armed movement with the help of the people and the King. The Nepali Congress had dispatched a letter to Maharaja Mohan Shamsher asking him to move forward to the establishment of a democratic government in Nepal, otherwise it threatened to launch an armed movement shortly.[129] Even to this the Rana Government turned a deaf ear. The result was that Revolution took place in the month of November 1950,[130] bringing to an end the Rana autocracy and democratic experiment began in Nepal.

Absence of International Pressure :

No sizeable domestic pressure was brought to bear on the Rana rulers for reforms in their obscurantist oligarchis rule nor was there any international pressure in that direction. There was no danger to the Ranas from the side of Tibet. They suspected danger to their rule from India, particularly, in the context of the freedom movement started by the Indian National Congress. But British India stood as a protective umbrella over the Ranas. The British government was little bothered about whether there was an autocratic Rana regime in Nepal. What it was mainly concerned with

128. See, Isthihar issued by Maharaja Mohan Shamsher banning all activities of political parties and other secret organisations inside Nepal, Gorkhapatra, Vol. 48, No. 31.
129. The Nepali Congress after Bariyagina Conference approved a resolution for armed movement in September, 1950.
130. Revolution of November 11, 1950. For further information See Chapter II.

was that Nepal remained a buffer State not posing any danger to Indian security. Besides there were two consideration which always weighed with the British government: (a) that Nepal remained an economic colony insuring a market for British goods; and (b) that Nepal did not disturb the continuous supply of Gorkha soldiers to the British Gorkha Rifles to be utilized as the most loyal soldiers in crushing Indian freedom movement and in defending British Raj. Therefore, what the British government understandably wanted was that there should be political stability in Nepal, so that India's above mentioned two-fold interests were not in a jeopardy. In this manner the Ranas were in a good position to continue in their traditional, autocratic and oligarchic rule.

Implication : (Personal and Group) :

The pattern of individual or group politics that marked Nepalese public life during 1768-1950 was concerned with power for individuals rather than with power to be devolved upon the people. So the administration under anyone coming to power through court intrigues, conspiracies or violence, would have become autocratic per se. In such a situation any individual attempt for political reforms was bound to be crushed. This was what had happened in Nepal in this period under review.

However, later-day Ranas, particularly Ranas like Padma Shamsher, were hard put to it in the face of India's independence and the process of the withdrawl of the British from Asia. The Ranas were constrained to find out some ways and means for the continuity of their rule. This was what was intended by the Government of Nepal Act 1948, proclaimed jointly by King Tribhuban and Prime Minister Padma Shamsher. This part of our discussion would be made in the following Chapter.

CHAPTER II

FRAMING OF THE GOVERNMENT OF NEPAL CONSTITUTIONAL ACT 2004 V.S. (1948 A.D.)

(I)

Constitutional Reform Committee of 2003 V.S. (1947 A.D.)

The Second World War changed the global politics. British Imperialism was most adversely affected by the developments during and after the great war. Britain was the master of the sub-continent of South-East Asia, Middle East, Africa and Europe. But after the Second World War the wave of independence spread all over these areas. It was very difficult for the British government to control national uprisings. Several countries demanded their independence. Democracy was the main slogan of the new-born states. On northern side of the Kingdom of Nepal, Chinese Communists were launching their movement against the Koumintang government of Chang-Kai-Sheok. In the south of Nepal there was a great stir going on in India and two new states were to be created - India and Pakistan. At this time in Nepal, Padma Shamsher became the Maharaja, the Prime Minister. When India was on its way to becoming independent, the Nepalese in Nepal and in India demanded certain political reforms in their country. Leaders of the political parties, working underground in Nepal, and those living in India declared that they would launch a movement for reforms in the country. The collapse of the British rule in the sub-conti-

nent gave political inspiration to the Nepalese inside and outside the valley of Kathmandu. Nepal had remained a closed country for the last hundred years, and therefore, the modern idea of democracy had failed to reach there. In the year that saw India attain its independence, a mass movement with its objective of establishing a responsible government under the aegis of a Constitutional monarch started. The first open movements in which the people participated were in the form of labour strikes led by the Nepali Rastriya Congress at Biratnagar Jute Mills, and students movement in various parts of the country. The century old Rana autocracy also felt the need to move forward with some reforms as, without some such step, as it felt, it could not continue in power for long.

On the occasion of his birthday ceremony[1] Prime Minister Padma Shamsher announced that he would make an important announcement shortly. He consulted his cousins, nephews and Courtiers (Bharadars) on some important political matters. He asked them to furnish him with some reasonable answers to a questionnaire, which he had already circulated, within a fortnight.[2] In fact, this letter signed by the Prime Minister (Sree Tin Maharaja) was circulated to at least fortyfour persons who were in favour of the idea of reform.[3] Most of the Ranas who were in line of succession

1. 14 Marga, 2003 V.S. Gorkhapatra, Marga 14, Vol. 46, No. 63.
2. Duplicate of the questionnaires circulated to the officials by the Prime Minister Padma Shamsher for the constitutional reforms in Nepal. - Narendra Mani Acharya Dixit, "Nepali Itihasko Eka Tukra" (Art.), Nepali, Quarterly, (Kathmandu), No. 46, Magh, Flagun and Chaitra, 2027 V.S., pp. 77-78. Appendix
3. These were Ranas and Bharadars who belonged to the younger generation.

to premiership and the courtiers (Bharadars) supported the reformist ideas of the Prime Minister and decided to give him full support in carrying out political reforms in Nepal. The main object of this political reform was said to be to help towards the country's progress by associating the people closely with the government machinery. Three months[4] after the Prime Minister made a declaration at a public meeting called at his residence, which was attended by his cousins, nephews, courtiers (Bhardars), trades-people as well as teachers and students.[5] A Reform Committee was set up, under the Chairmanship of the Commanding-General Sri Bahadur Shamsher JBR, with other members to be appointed by him.[6] He invited experts also from India.[7]

Sri Prakash, the member of the Central Legislative Assembly and Prof. Ramugra Singh, Dean of the Law Faculty of the Lucknow University, were invited by the Government of Nepal to give their suggestions to the Reform Committee. They offered the Committee certain suggestions.

The first meeting of this Committee was held under the Chairmanship of Commanding-General Bahadur Shamsher at Singha Durbar[8]

4. Falgun 2, 2003 V.S. Gorkhapatra, Falgun 3, 2003 V.S., Vol. 46, No. 91.
5. Padma Shamsher's residence, Bisalnagar Durbar, Kathmandu.
6. Names and positions occupied by the members of the various committees. See Appendix.5.Unpublished document Bulletin No. 3, Gorkhapatra, Vol. 47, No. 49, Sravan 20, 2004.
7. Government of Nepal had requested the Government of India to send some constitutional experts to Nepal in July 1947 A.D.
8. In the Rana period, Singha Durbar was the Official Residence of the Rana Prime Minister (Sree Tin Maharaja).

on May 18, 1948 A.D. (Jestha 6, 2004 V.S). After the first meeting the Chairman resigned and the Prime Minister appointed General Singha Shamsher in his place. In the meeting detailed discussion took place between the members of the Committee and the Indian experts. The Indian experts submitted their draft of the proposed constitution before leaving Nepal, expressing full satisfaction with the attitude of the Committee. The Indian experts left Kathmandu on 19 Ashad, 2004 V.S. and reached Raxual on Ashad 21, 2004 V.S., from where they issued a statement that, "the members of the Constitutional Reform Committee went through the outline of the drafted constitution and we were fully satisfied by the attitude taken by the Committee."[9]

Wellknown Indian historian, Dr. Ishwari Prasad of Allahabad University, who had visited Kathmandu, had issued a statement that, "he found the present constitution of Nepal very strange. Under this constitution, the government will be formed with half civil and half military officials. In the present set-up no power can form a democratic government in Nepal. The reasons are obvious."[10]

The Committee met for a number of times.[11] The Committee set up five main committees along with lesser ones for drafting the

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9. Gorkhapatra, Ashad 21, 2004 V.S., Vol. 47, No. 37.
10. Gorkhapatra, Sravan 22, 2004 V.S., Vol. 47, No. 50, pp 1 and last page.
11. Most important meetings were held to draft the constitution and to approve the rules and regulations of the constitution.

proposed constitution.[12] The sub-Committees began to study the opinions of the forty-four members.[13] The members of these sub-committees also submitted their opinions on the basis of the documents submitted to the main committee.

The Reform Committee meetings used to take place at Singha Durbar and sometimes also at the residence of Chief Saheb (Mukhtiyar) Mohan Shamsher. In fact, the most important meetings of the Committee were those held at the residence of the Mukhtiyar. The Committee submitted the final draft within six months. Though the draft of the constitution was ready, it took a long time to frame the rules and regulations meant to make the Constitution operative. The experts, too, could not produce them off hand, either.

The Reform Committee submitted its final report, both in Nepali and in English, to the Prime Minister who, thereafter, called rounds of special and urgent meetings under his own Chairmanship. The meetings were attended by senior members of the Rana family, specially those in line of succession. At long last, the special meeting, which consisted of the representatives of all organs, Senior brothers in roll of succession, General Shanker Shamsher JBR, Major-General Basanta Shamsher JBR,[14] Members of the Reform Committee and sub-committees, and other high officials, and courtiers (Bharadars) gave its final approval to the Draft Constitution, on December 26, 1947 A.D. (Poush 11, 2004 V.S.) which, in turn, received the approval of the Prime

12. See Appendix. 5 (II).
13. See, Gorkhapatra, Editorial, Sravan 3, 2004 V.S., Vol. 47, No. 42, and about the Panchayat System Vol. 47, No. 124.
14. These two Generals were the head of Mulkibandobasta and Nyayabibhaga , Gorkhapatra, Vol. 47, No. 105.

Minister. Speaking on the 26th January, 1948 A.D. (Magh 13, 2004 V.S.) on the occasion of the inauguration of the 'Government of Nepal Constitutional Act 2004 V.S. (1948 A.D.)' he gave an account of the reason that had impelled him to give to his country a new Constitution.[15] The function held at his residence, Bisalnagar Durbar, was attended by his cousins and nephews, the courtiers (Bharadars), civil and military officials, members of the Reform Committee, businessmen and teachers and a large number of students.

Addressing the meeting the Prime Minister had said that in the past all such attempts to associate the people with the government had failed as they were premature. The people had not approved of the establishment of a parliamentary Cutchery in 1851. Similarly, in 1918, the attempt to introduce the elective system in the Kathmandu municipality had to be dropped as much disorder took place in the city at the time of the election. But in view of the changed condition, the Prime Minister said, that he thought that, "It would be a great help towards the progress of the country if an arrangement could be made to associate the people even more closely than at present with the government, as is the practice in the greater part of the world today."[16]

15. Prime Minister (Sree Tin Maharaja) Padma Shansher JBR promulgated this Constitution on 26th January, 1948 A.D. (13 Magh, 2004 V.S.). See Gorkhapatra, Vol. 47, No. 117. For the Address of the Prime Minister of Nepal at the Inauguration of the Government of Nepal Act, See: Amson, J. Peaslee, Constitutions of Nations (Washington, 1948); Vol. II; P. Neupane, B.A., B.L.: The Constitution and Constitutions of Nepal, (Kathmandu, 1969), pp. 197-206.

16. Ibid., p. 2: Peaslee, op. cit., p. 505.

Following this, and in view of great political changes everywhere he thought that it would be a great help towards the country's progress, if some arrangement could be made to associate the people even more closely with the government and to give earnest consideration to the question of how continued increase in the prosperity and welfare of Nepal could be achieved through reforms.

Referring to the economic, social and political reforms, he went a step forward and said, "More than almost any other matter, we have to undertake these steps only after long and mature deliberation and with the consideration of the good and evil effects they might produce on each and every organ of the state."[17]

The Reform Committee was set up on the basis of the experience of advanced countries. It had framed the constitution on the basis of the model of the Government of India Act 1919 and 1935.

The "Supreme authority" of the Prime Minister was stated to have been derived from the King of Nepal dating back to the year 1846, through their Panjapatras. Thus in the ultimate sense Sree Pancha Maharajadhiraja as the King was called, was recognized as the supreme authority. But the articles of the Constitution leave no doubt that the King was for all practical purposes merely a nominal figurehead. It is only in Article 3, in the whole Constitution, after the Preamble that the term His

17. Gorkhapatra, Vol. 47, No. 117, p. 4.
Peaslee, Ibid., p. 506.

Majesty the Maharajadhiraja occurs that too in connection with the rule of succession. Here, too, advantage has been taken of his name to declare that the rules governing succession to the throne as well as to the office of the Prime Minister are for all time 'inalienable and unalterable.'[18]

In the inaugural address of the Government of Nepal Act 2004 Sambat (1948 A.D.), Prime Minister (Sree Tin Maharaja) Padma Shamsher referred to a comprehensive scheme for political reforms.[19] He gave a matter-of-fact analysis in his observations of the new Constitution on January 26, 1948.

While presenting the Draft Constitution to the people, he outlined the features of the Rana administrative system and said that to save the peace and prosperity from frequent commotion and bloodshed in the country, the King, the Bharadars and the people had entrusted the supreme authority to the Rana family. For one century the Ranas were carrying on the administration in accordance with the laws, usages and customs of the realm. They had maintained Nepal's rightful place in the comity of the free peoples of the world, situated as Nepal was between the mighty empire of China, on the one hand, and the rising flood of British power on the other hand. The Ranas had preserved its independence with the Hindu Constitutional Monarchy

18. The Government of Nepal Act 2004, Part I, Preliminary, Art. 5.
19. These so-called reforms were rejected by the Nepali National Congress through a resolution passed in the Banaras Political Conference (21st and 22nd February, 1948) which demanded an Interim Popular Government and a Constituent Assembly to frame the Constitution.
- Dilli Raman Regmi, A Century of Family Autocracy in Nepal (The Nepali National Congress, Kathmandu, 1958), p. 212.

at its head.[20]

The Constitution had 68 articles and was based on the fundamental idea that real power was vested in the Prime Minister. The Preamble to the Constitution stated :

> "Whereas by virtue of the supreme Authority vested through the instruments of their sacred Panja-patras by Sree Panch Maharajadhiraja of Nepal, dating from the Sambat year 1903 onwards, delegating all powers of the State upon the contemporaneous Sree 3 Maharajas."[21]

The Preamble further adds :

> "And whereas, I, Maharaja Padma Shumsher Jung Bahadur Rana, am now carrying on the administration of the country by virtue of the authority vested in me by the aforesaid Panja-patra."[22]

The Preamble also made it clear in unequivocal terms that the Constitution called 'The Government of Nepal Act 2004 Sambat' (1948 A.D.) was given by the Prime Minister, Maharaja Padma Shamsher Jung Bahadur Rana :

> "to bring Nepal, this sacred country of Lord Pashupatinath, in line with the advanced nations of the world and give our beloved motherland her rightful place in the comity of nations. And ... through the resurrection of our ideals of the Panchayat and other similar institutions, ... to provide for the increasingly closer association of our dear people in every branch of administration and thus bring about enchanced prosperity and happiness to our people."[23]

The body of the Constitution was divided into six Parts. In the first part entitled 'Preliminary' it was categorically

20. Lines from the Address of the Prime Minister of Nepal Padma Shamsher, upon the inauguration of the Government of Nepal Act 2004 Sambat (1948 A.D.).
    Gorkhapatra, Vol. 47, No. 117, p. 1.
    Peaslee, op. cit., p. 505.
21. Quoted from the first para of Preamble of the Government of Nepal Act 2004 V.S.; Peaslee, Ibid., p. 496; Neupane, Ibid. p. 197; Grishma Bahadur Devakota, Nepalko Rajnaitika Darpan, (Kathmandu, 2016 V.S.), p. 709.
22. Ibid., second para.
23. Ibid., para third and fourth.

laid down that 'All provisions of this Act shall ... come into force throughout the Kingdom before the end of the year 2005 Sambat (1949 A.D.).[24] But in actual fact it did not come into force till years later and that, too, after certain modifications.

The Constitution had the appearance of being a liberal document. It contained a Chapter on Fundamental Rights and Duties, which guaranteed certain rights to the citizens of Nepal 'subject to the principles of public order and morality.' Viewed in the abstract, this guarantee was of great significance, as, never before, rights had been guaranteed to the citizens. The rights had been guaranteed were more or less the same as they are found in other Constitutions. These are: freedom of person, freedom of speech, freedom of the press, freedom of assembly and of discussion, of worship, complete equality in the eyes of law, cheap and speedy justice, universal adult sufferage, security of private property as defined by the law of the State as at present existing and laws and rules made there under.[25] But fundamental rights were guaranteed without political liberties. Padma Shamsher says, "Keeping in view the opinions of the experts and the drafting committee he restricted various political liberties."[26] It is undeniable that some restrictions have to be made in the interest of public peace and morality, but denying all liberties was certainly not warranted.

24. Part I, Preliminary Art. 2.
25. Art. 4 and 5 for details see f.n. 53 of this Chapter.
26. Extract from the speech delivered by Prime Minister Padma Shamsher, Gorkhapatra, Vol. 47, No. 117, p. 2. Peaslee, op. cit., p. 507; Neupane, op. cit., p.

As the incorporation of these rights had been opposed by a number of Ranas, it was deemed wise to add an article on the duties of the citizens as well. The idea might have been taken from the Constitution of the U.S.S.R. which mentions such duties. The Duties of the citizens were mentioned in Article 5, which were to promote welfare, to contribute to public funds, to be in readiness to work physically and intellectually for the safety and well-being of the Kingdom and bear true allegiance to the King, the Prime Minister, the state and the Constitution.[27] It is interesting to note that the duty of a citizen was first to the King and the Prime Minister and then afterwards to the State and the Constitution.

As the King, as stated above, was hardly of any significance, it might be concluded that the primary duty of every citizen was to the Prime Minister alone. This naturally left little choice for the citizen who was expected to be loyal to the real authority or suffer for his lapses.

Another important thing to be noted is that in the whole Constitution nowhere had it been mentioned that legal protection had been given to the citizen to seek redress in case of a violation of any of his fundamental rights. Viewed from this angle, there was no provision for any legal remedy against the encroachment of the government upon his fundamental rights.

In the executive sphere the highest authority of the state was to be exercised by the Prime Minister directly or through his subordinates.[28] In other democratic countries this power is

27. Art. 5.
28. Art. 6.

exercised by the head of the State directly or through subordinates, who are responsible to the popular Chamber. According to this Constitution, Nepal continued to have a monarchical government despite the fact that the traditional authority of the King had long been usurped by the Rana Prime Minister.

In this Constitution the Crown finds no mention and has no constitutional position in the governance of the country except as mentioned in Article 3, where it is mentioned in connection with the rule of succession to the throne. Under this Constitution, the King had no Constitutional position except as the "symbol of national unity".

As the head of the government, the entire executive power was vested in the Prime Minister. So in executive affairs he was the most powerful with 'the King overhead and the people on the lap'. The executive authority was to be exercised by the Prime Minister with a Council of Ministers to aid and advice him, which was to consist of not less than five members out of whom at least two were to be chosen from among the members of the legislature.[29]

In the legislative field also, he had the power to summon or prorogue the House of the Legislature.[30] Bills were to be

29. Art. 7 (a and b). Such type of Council of Ministers was formed the last decade of Primership of Mohan Shamsher. He had appointed two Ministers in his so-called Ministry. One of them Mr. Gaya Prasad Shah had supervised the Food Council. Though he had announced that another name shall be announced later on but in the Rana period another person was not appointed in his ministry. Gorkhapatra, Vol. 51, No. 101.
30. Art. 23 (b)(i) and (ii). He had summoned the Parliament to abdicate King Tribhuvan Bir Bickram Shah Dev and to proclaim Gyanendra Bickram Shah as the Maharajadhiraja of Nepal, convened two special meetings about the proposals sent by the Government of India to accept King Tribhuvan as the

introduced, approved and accepted or rejected by him in the legislature.[31] He could declare a state of Emergency by proclamation or terminate the emergency period of his own chosing.[32] The government could raise loans in an emergency of which the legislature was to be informed when it would meet.[33] He had full authority to appoint the members of the various committees and allocate business to them.[34]

In the judicial field also, he was the final authority. He could appoint the Chief Justice and other judges.[35] He had also the power to remove a judge from office when a joint prayer by the two Houses of the legislature was made, or when such a recommendation was made by the Judicial Committee of the legislature.[36] He had the power of pardon and reprieve.[37] His command was law and his saying was the final judgement.

The Auditor General and the members of the Public Service Commission and other official were to be appointed and dismissed by him.[38]

No doubt in the light of all this the King was merely a nominal head of the state.

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31. Art. 38 (a) and Art. 37.
32. Art. 46.
33. Art. 38(v).
34. Art. 14(a).
35. Art. 53(b).
36. Art. 52.
37. On the basis of the Lal-Mohars and Panjapatra granted to him by the King he had used these powers in the judicial field.
38. Art. 62(a) and Art. 65(a).

There was a Council of Ministers to assist and advice the Prime Minister on his day to day functions. The members of this body were to be chosen from among the members of the legislature.[39] The Council of Ministers should consist of not less than five members of which two at least should be chosen from the elected members of the legislature as determined by the Prime Minister from time to time.[40] In fact, the ministers were not responsible to the legislature and it was not necessary for them to enjoy the confidence of the legislature.[41] The Prime Minister had full authority to appoint or dismiss them at any time he liked.[42] This body was totally and solely responsible to the Prime Minister. The Prime Minister could preside over the meetings of the council of Ministers. In his absence his successor the Mukhtiyar (Commander-in-chief) was to preside over the meetings.[43] The ministers were to work within the framework of the rules made by him but not by the act.[44] The ministers were to hold office for four years and the Prime Minister was to allocate portfolios to them and to fix the order of precedence of the ministers.[45] The seat of a minister could be vacated by his resigning, or by his losing confidence of the Prime Minister or because of his grave offence.[46] There

39. Art. 7(a).
40. Art. 7(b).
41. Art. 8(a). Second line.
42. Art. 9(b)
43. Art. 8(a)
44. Ibid. Art. 8(b) Second line.
45. Art. 8(b).
46. Art. 9.

was the provision that if a minister resigned or ceased to enjoy the confidence of the Prime Minister, he would not cease to be a member of the legislature for the remaining period of his term.[47] But when he admitted, or was condemned by secret ballot by the council of Ministers of having committed some grave offence, he was to cease _ipso facto_ to be a member of the legislature.[48] The type of government under such a constitution was neither Parliamentary nor Presidential in nature. In fact, the executive was fully independent and the legislature had no right to interfere with the will of the Prime Minister. So the Prime Minister of Nepal had maintained his position as it was before this Act and he remained an absolute ruler.

The Council of Ministers was to transact all executive business of the State.[49] It was, however, to be its special responsibility to give particular attention to all matters not falling within the purview of the legislature, to lay down the general policy of the State, to scrutinize the budget of the various departments, to give final consideration to the treasury bills to be presented before the legislature and to achieve co-operation between the various departments of administration.[50] The policy of the state was to be laid down by this body. But the Act said :

> "Within the framework of the policy laid down by the Council of Ministers under this Act, the ministers

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47. Provision of Art. 8.
48. Art. 9(c).
49. Art. 11(a).
50. Ibid., Art. 11(a).

shall, in their own discretion, administer the department or departments. They shall be responsible to the Council for all the acts of their departments and shall also submit to His Highness such information and explanation as he may require."51

The list of the functions of the Council of Ministers was impressive, but the Council was really in no position of significance. Because in all these matters, in respect of all powers, and in every sphere of government the real and effective power ultimately rested with the Prime Minister. According to the Constitution, the position was that the ministers were appointed by the Prime Minister, and they held office at his pleasure. So the Council of Ministers could not go against the wishes of the Prime Minister because of the fact that simply to retain their offices the ministers had to be in the good book of the Prime Minister. If he was not satisfied with any member of his Council of Ministers, he could drop him. The ministers as already said had no responsibility to the legislature, and as such there dependence on the Prime Minister was complete.

Early History of Panchayat System :

Historians are not sure about the origin and development of the Panchayat system. Perhaps it originated in Asia somewhere in the Himalayan region. In the Manusmiriti mention of Panchayats is found. In the Vedic age states were small, therefore the villages gained importance, and even when larger units came into existence they continued to remain the pivot of administration.[52] Manu and Sukra had pointed out the importance of the

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51. Art. 11(b).
52. U.N.Singh, Panchayat Democracy of Nepal in Theory and Practice: Chapter 2, 'Historical Background', (Department of Information, HMG/Nepal, 1972), p. 15.

Panchayat when they prescribed the qualifications of a Pancha in their works. Oriental Scholars have also accepted that the Panchayat had been a powerful instrument for the expression of popular will. When Aryans settled down in small knots of houses, made up of several branches of families, these small units were named as '<u>Grams</u>'. According to Zimmer the '<u>Grams</u>' were the lower subdivisions of '<u>Vis</u>' during early period.[53] The Panchas are 'Parameswar' or 'Lord <u>Pancha</u>'. They are looked upon as men of great prestige and integrity.

In the Kirati period, Nepal Valley was governed by Kirati Rajas.[54] The society and the administrative system were influenced by <u>Vajji (Brijji) Sangha</u> of Magadha. One-hundred and fifty years before, the birth of Gautam Buddha, a local government based on Panchayat system did exist in Nepal. As such though the government was monarchical, the social system was based on democratic ideology.

The exact information is found since the Lichchhavi period, The inscriptions indicate that a developed type of Panchayat system existed in Nepal right from the first century A.D. The word '<u>Panchali or 'Panchalika</u>' suggest it. <u>Panchali</u> means a village organisation and <u>Panchalika</u> means a member of village

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53. Ibid., p. 15.
54. Panchayat System was established in the reign of Kirati King Thung-Hang. - <u>Panchayat Sambandhi Samanya Gyan</u>, <u>Praud Sikchhya Patrika</u>, Ministry of Education, Department of Adult Education, Section HMG/Nepal, 2028 V.S., pp. 1-2, Vol. 10, No. 9, pp. 1-2.

    Acharya, Baburam ."<u>Athulaniya Panchayati Prajatantra</u>" (Art.), <u>Panchayat Parichaya</u>, I, (Home and Panchayat Ministry, HMG/Nepal, 2023), pp. 53-55.

assembly. They are the administrators, of the '*Dharmaguthi or Dharmagosti*'. In fact, Dharmagosti was a committee set up for discussing religious affairs. In this Dharmagosti there used to be at least, five members. Historical facts show that *Panchali Sabha* (Assembly) was more powerful in the day to day administration of the State. All the villages and towns of higher status had their own autonomy. They were entitled to the right of administering local justice, making tax collection and transacting trade and commerce. The four main departments of government viz., *Mapchok*, *Kuther*, *Suli* and *Lingwal* were not permitted to interfere in day to day administration of a village. The most important function of Panchayat was in the field of local justice. For this purpose the village court called '*Pancha-Paradhwar*', was an important part of the judicial system.[55] In fact, Panchali system was implemented in some urban areas of the state of Lichhavis period but it was not the base of the political system of the country. The country was ruled by *Mahasamanta* and *Samanta*. Historical evidences make it clear that in the time of Ansuvarma this system was highly appreciated. Raja Narendra Deva had addressed the Pradhan Pancha and other members of the Kipung Gram Panchayat.

Early History of Panchayat System :

The history of ancient Panchayat would remain incomplete if we would not mention the powerful and popular system of *Gosthi and Gosthika* or the committee and sub-committees. The

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55. Sinha, op. cit., p. 16; Acharya, Ibid., pp. 53-60.

active members of a Panchayat were divided into various Gosthis or Bosthikas and each one of these was assigned a specific responsibility.[56] In this way the powers and functions of the various organisations were decentralised.

During the Malla period, the Kings of Kathmandu and Bhaktapur ruled in accordance with the ideas of Manusmriti and well established traditions, usages and practices. The King himself used to preside over the meetings of the Panchas. For example, this was so in the reign of King Yakchya Malla (1428-1498 A.D.) of Kathmandu in the 15th century and King Ranjit Malla (1696-1769 A.D.) of Bhaktapur in the 18th century.[57]

The Shah rulers of Gorkha state also ruled on the basis of the Panchayat system. Historical evidence bears out this fact, specially in the period of Sree Panch Ram Shah and Prithivinarayan Shah of Gorkha. The honorific of the King at that time was 'Sri Panch or Sira Pamch', meaning 'Pradhan Pancha or Chairman of Panchayat'. It is well known in Nepal that the arbitration of the court of Gorkha King was highly appreciated by all. In case of misunderstanding between the principalities the rulers used to go to the Gorkha King for Judgement. The adage that 'if you do not receive justice, you have to go to Gorkha' came into vogue about this time. After the unification of Nepal, King Prithivinarayan Shah began to rule Nepal with the advice of his courtiers Thar-Ghars.[58]

56. Panchayat Parichaya I, Home and Panchayat Ministry, HMG/Nepal, 2023, V.S., pp. 53-60.
57. Acharya, op. cit., pp. 57-59.
58. Ibid., pp. 59-60.

In the Rana period, every Isthihar, Goshana, Sanad and Sawal (Ordinance, Proclamation, Signed letters and rules and regulations) were addressed to 'Pancha, Bhaladmi Gahira kee Yatochhit ..;' etc. (to every Pancha, Gentlemen and other citizen of the country).[59] Such kind of addresses were the traditional practice in Nepal and these have been used in the periods of various Nepalese rulers. This also indicates that from the very beginning the citizens of the country were held in the highest esteem.

In 1926 A.D. (1983 V.S.) the first attempt was made in the Rana period by Maharaja Chandra Shamsher to revive judicial power of the Panchayat. The first panchayats were organised in the district of Dang-Deokhuri, Western Nepal, under the name of Manya Jana Kachhari with powers of reconciliation among disputing parties.[60] Prime Minister Bhim Shamsher had officially established formally nine Panchayats in Kathmandu, Bhaktapur and Lalitpur in 1930 A.D. (1987 V.S.). Prime Minister Juddha Shamsher had established 'Praja Panchayat' in 1936 for the smooth working of Panchayats under the Rana autocratic system. It was extended to the whole area of Terai in 1946. Though these Panchayats were established in most parts of the country, they had power to look after the judicial problems but had no administrative powers.

The Government of Nepal Constitutional Act 2004 V.S.

59. See documents in the Appendix.
60. Indra Prasad Kaphely, Fundamental Bases of Panchayat Democratic System, (Kathmandu, 1967), pp. 62-63; Sinha, op. cit., p. 20.

(1948 A.D.), which came to be known as the first written Constitution of Nepal, was claimed to be based on the Panchayat system. While promulgating the Constitution of 1948, Maharaja Padma Shamsher said: "We have tried to mould tho elective system of the west to the Panchayat system, which is an essential part of our heritage and culture ..."[61]

Then the Baidhanik Sudhar Samiti (Constitutional Reform Committee) recommended the abolition of the Mauya Jana Kachharis and all the Panchayats, established after 1926 A.D. New Acts establishing village and judicial Panchayats (Village 'Panchayat Act', 'Panchayat Court Act and District Act in 1946 and 1950) were passed. After the resignation of Maharaja Padma Shamsher his successor Mohan Shamsher, summoned the Parliament under the Constitution of 1948 A.D., consisting of the nominated and elected members of the various levels of Panchayats.[62]

In the Constitution, on the other hand, terms like responsible government and democracy do not find any mention. On the other hand the special privileges of the Rana Prime Minister and his family had been duly safeguarded. In practice, there was no change by the New Act in the former position of the Prime Minister. How cleverly things had been manipulated will be evident from the fact that the Act did not even mention responsible government even as a distant goal.[63] The hold of the Rana family

61. Maharaja Padma Shamsher's speech at the Inauguration of the Government of Nepal Act 2004 V.S.; See: Peaslee, op. cit., p. 507.
62. See: f.n. 118.
63. Regmi, op. cit., p. 203.

over the country and its people remained as complete and rigid as ever before. The Constitution had simply put down in black and white the rights and privileges of the Rana Prime Minister.

As the members of the Council of Ministers were to be selected by the Prime Minister and majority of them might not be members of the legislature, and as already stated, they owed no responsibility to the Legislature the only cord binding them together was their loyalty to the Prime Minister. Those members of the Council of Ministers who were to be picked from the legislature were again naturally those whom the Prime Minister considered loyal to him. The fact is that the loyalty of the Council of Ministers was for the Rana Prime Minister. Hence its utter incapacity to work independently.

The Partyless Panchayat System is a special feature of this Constitution. Padma Shamsher had clearly declared that the government had taken a special precaution in introducing political elections in the country and for this reason it was the intention of the government that the country should not be thrown into the vortex of the party system. But it was the desire of the government that all good, able and energetic elected representatives of the people should come to the centre and cooperate with the government.[64] "The Panchayat system might be called an essential part of the Nepalese heritage and culture."[65] This system, therefore, had not accepted the party system as it prevailed in the democratic countries. So election

64. Prime Minister Padma Shamsher's Speech, op. cit., Gorkhapatra, Vol. 47, No. 117, p. 3; Peaslee, op. cit., p. 507.

was to be held on the basis of individual merit. The main objective of the Rana Government behind all this was not to permit the rise of political parties which might create a danger in course of time to its monopoly of power by raising political and economic issues.[66]

Comprehensive structure of the Legislature, its powers and functions :

This Constitution envisaged the establishment of a comprehensive legislative structure beginning from the Gram Panchayat (Village Panchayat) or the Nagar Panchayat (City or Town Panchayat) representing a town or city as the lowest unit. Zilla Panchayat (District Panchayat) was the second unit in this legislative structure while at the apex there was the State Legislature (Parliament). So the entire organisation of the Panchayat system was built on a three-tier frame work.

The Constitution had stated that there was to be a Gram Panchayat for every village or group of villages, which was the "unit as specified by rules framed by the government ... consisting of five to fifteen members elected by the votes of all adults with necessary qualifications ..." The Pradhan Pancha of each village Panchayat was to be elected by the Panchayat from among its own members. It was the duty of a village Panchayat, within the limits of the funds at its disposal and subject to control of the government, to look after village welfare and development matters.[67]

66. Ibid.
67. Arts. 16, 18 and 19.

A Nagar Panchayat was provided for each city and town consisting of ten to fifty members elected by qualified adults. They were to elect their own Pradhan Pancha in accordance with the rules prescribed by the government. The duty of the Town or City Panchayat was, within the limits of the funds at its disposal and subject to control of the government to work for the welfare and development of the city.[68]

A Zilla (District) Panchayat was to be set up in every Zilla (District) in accordance with the rules and regulations prescribed by the government. The Pradhan Panchas of Gram Panchayats and Nagar Panchayats were to elect from among themselves and, if necessary, from among their members fifteen to twenty members, who together with the special representatives nominated under rules framed by the government, would form a 'Zilla Panchayat'. The President of the district Panchayat was to be elected by it. The Zilla Panchayat was to receive from the centre the share of allocated funds for the Zilla concerned. They were to retain half of the funds for their own use and distribute the other half among the village Panchayats within their respective jurisdiction in proportion to the amount contributed by the areas concerned. The function of the Zilla Panchayat consisted in coordinating the activities of the village and town Panchayat's within its jurisdiction and to aid and advise the Badahakim[69] of the Zilla on matters of policy,

68. Arts. 17, 18 and 19.
69. Badahakim was the head of administration of a district. He used to maintain a miniature autocracy of his own in the district head-quarters. He was like the Director-General of the Rana period.

relating to the welfare of the Zilla. Such other duties as from time to time were to be assigned to it by the government,[70] were also to be performed by it.

The main duty of the various levels of Panchayats was to attend to all matters relating to education, welfare and prosperity of the people and the territory under their charge. These bodies were to look after, for example, justice, water supply, sanitation, construction and maintenance of roads, and public buildings, basic education and unemployment relief through cottage industries and other measures which were likely to promote the health, safety, education, comfort, and the social and economic well-being of the people.[71]

The apex of the legislature was the State Legislature. It consisted of the Prime Minister and two Chambers, the Rastra Sabha and the Bhardari Sabha.[72] In the Upper House, the Bhardari Sabha, there were twenty to thirty members nominated by the Prime Minister.[73] So, in this House there was no popular representation. The word 'Bhardari' indicated that in this House there would be only the representatives of the Rana family, feudal Lords and other hangers-on of the Prime Minister. In the Lower House, called the Rastra Sabha, there were to be not less than sixty and not more than seventy members, three fifths of whom were to be elected and the rest were to be nominated by the Prime Minister. The elected members were the 32 Pradhan

70. Art. 18 and 21.
71. Art. 19.
72. Art. 22 (a).
73. Art. 22(c). See: Appendix (List of the nominated members). 7 (I).

Panchas of Zilla Panchayats and the Pradhan Panchas of the four Nagar Panchayats of Kathmandu, Patan, Bhaktapur and Birganj, two representatives from the intelligentia, one from among the government servants and one each from the merchants and traders, Zamindars and Birta-holders and labour. So in this house were the representatives practically of all sections of the people.[74] The In this way, the Government of Nepal Act had envisaged the establishment of a comprehensive legislative structure based on three tiers and had made the Panchayat as the 'Legislative Institution' of the country. The Legislature was a permanent body and one-fourths of its members were to be elected or nominated every year.[75]

The Commander-in-Chief (Mukhtiyar) was to be the President of the Upper House, i.e., the 'Bhardari' Sabha, and its Vice-President was to be nominated by the Prime Minister.[76] In the Lower House, there were to be a President and a Vice-President who were respectively to be nominated by the Prime Minister and elected by the Chamber from among its members.[77] In both Houses the President was to preside and conduct the business. In the absence of the President, the Vice-President was to conduct the business of the House.

The Legislature was to be summoned to meet at least twice a year.[78] The Prime Minister in his discretion could summon one or the other chamber to meet at such time and place as he thought

74. Art. 22(b). See: Appendix List of the elected members: Schedule(A).7 (II).
75. Art. 22(d).
76. Art. 26(c).
77. Art. 26(a).
78. Art. 23(a).

fit, and had the right to prorogue the chambers also. The Prime Minister in his discretion could address or send messages to either house or both of them.[80]

The King had no connection with the legislature. Neither could he summon nor prorougue any of the houses, nor had he the right to address or send messages to either of them.

The members of the Legislature had the right to ask questions, move resolutions and introduce bills. But to these rights there were some limitations. For example, the Prime Minister could disallow any of these at any stage in the public interest.[81] Article 34(b) stated "With these restrictions any member of the legislature could ask questions, move resolutions and introduce bills regarding the welfare and administration of the whole of the Kingdom of Nepal. But such bills were to be approved by the Prime Minister before their introduction in the legislature.[82]

The Legislature also had no power any question to raise or discuss concerning the private affairs of any individual or the conduct of any judge in discharge of his duties.[83]

A bill, either a fiscal or an ordinary bill, could be tabled on the floor of either chamber by any member of the House.[8] But no bill could be passed unless it had been approved by both the chambers. If a bill or any other measure had been passed only by one chamber and rejected by the other, or if there was

80. Art. 24.
81. Art. 34(b).
82. Art. 34(a).
83. Art. 34(c).
84. Art. 35(a).

disagreement among them as to the amendments to be made, or, if more than twelve months had elapsed from the date of the reception of the bill by the other chamber without being put before the Prime Minister for his assent, the Prime Minister could summon a joint meeting of both the chambers of the State Legislature. Bill passed by a Joint Session of both the chambers was to be considered to have been passed by the State Legislature.[85] In the joint meeting of both chambers, the President of the Upper House was to preside and conduct the business. In his absence the Prime Minister was to appoint a person for the purpose. Bills passed by the legislature were to become law only after the Prime Minister had given his assent.[86]

The budget was to be laid before the chambers of the Legislature by the Prime Minister at the beginning of every financial year. He was to make a statement of the estimated receipts (acquisition) and expenditure for that year and there were to be approved by both the chambers. Such statements would involve the sums required to meet expenditure referred to by this Act as expenditure charged upon the State revenue and other expenditure proposed to be met from the revenues.[87]

The following expenditure was to be charged upon revenue of the state: The Civil Lists of the King and the incomes list of the Prime Minister, expenditure for the armed forces and for the purpose of special responsibility with respect to prevention

85. Art. 36 (a and b).
86. Art. 37.
87. Art. 38 (b).

of any grave menace to the peace and security and financial stability of the country, salaries of the Council of Ministers, the Advocate General and the Auditor General, expenditure on religious Guthi and Trust and sinking funds and other expenditure declared by this Act or any other law to be so charged.[88] The statement on the expenditure with respect to grants on account of Panchayat was also to be submitted to the legislature for its final approval. No demand for grant was lawful unless and until approved by the Prime Minister.[89] The Prime Minister was to put his signature to the statement after the Legislature had passed the bills.[90]

Committees of the Legislature :

Various Administrative Committees were to be set up from among the members of the legislature to aid and advise the various departments of the executive and to associate the opinion of the legislature with government policy.[91] These committees were to deal with such departments as may be assigned to them by the Prime Minister, whether these departments fell within the purview of the legislature or not. A Committee appointed by the Prime Minister from among the members of the Lower House was to choose the members of the various Administrative Committees. There were to be at least four members in each committee. In most of the committees there were Rana-Generals, their sons in the role of succession, civil and military offi-

88. Art. 38(c) (i to ix).
89. Art. 39 (a to d).
90. Art. 40.
91. Art. 13 and 14 (a-b).

cials and other nominees of the Prime Minister. The head of the department for which the committee was set up was to be the Chairman of the Committee.[92] Most of the Chairmen of the various committees were naturally the members of the Rana family. These committees dealt with matters of administrative policies.

The Prime Minister in Council could declare emergency for the preservation of the law and order in the country or in any part of the country. Such regulation could be valid for only a period of six months.[93] In this period, the Prime Minister by proclamation, could assume any of the powers vested in him by constitution. He was to summon the legislature within six months of such a proclamation. Such an emergency could be withdrawn by a subsequent proclamation.[94]

All this makes it clear that in the executive and legislative fields, the king could do nothing. In reality, the Prime Minister was all powerful. In the executive field, he appointed the members of the Council of Ministers if it was considered necessary to conduct the business of the executive, or he could rule, by his own will, by virtue of the supreme authority vested in him through the instruments of the sacred Panjapatra of 1903 Sambat.

The constitutional system promulgated by Prime Minister Padma in 1948 projected a substantial modification of the old

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92. Art. 14 (a-d).
93. Art. 46.
94. Art. 46. Clause (a-b, k and sub-clause (i and ii).

judicial system.[95] Provision had been made to establish an independent judiciary in Nepal. In the autocratic system prevailing earlier the Prime Minister also functioned as the judicial head by the Lal-Mohar of 1856 A.D. Appeals of criminal and civil cases from all over Nepal were presented to him for final disposition. He was, in essence, the ultimate court of appeal, and, indeed all cases involving capital punishment or 'the Panchkhat',[96] crimes were referred to him for final decision.[97] But the Constitution clearly stated that the judiciary had been set-up with the purpose to make out impartial, cheap and speedy justice as in other democratic countries.[98] In fact, the judiciary had been established on the ancient panchayat system. Therefore, in 2006 V.S. (1950 A.D.) the Government of Nepal enforced the Panchayat Judicial Act 2006 V.S. (1950 A.D.) on the recommendation of the Baidhanik Samiti (Constitutional Committee)[99] by Sanad and Isthihar.

For making speedy justice available, the administration of justice was established at the primary level also. The institution of civil and criminal justice was set-up in the village and zilla panchayats. The administration of such courts was given to the village panchayats and, if deemed necessary, it could be done by

95. Leo E. Rose and Margaret W. Fisher. The Politics of Nepal: Presistence and change in an Asian Monarchy, South Asian Political System, General Editor : Richard L. Park, Cornell University Press (Ithaca and London, 1970), p. 85, Chap. 3. Administrative and Judicial Systems.
96. 'Panchkhat' means five grievous signs of orthodox Hinduism. The crimes are: (i)killing a Brahaman, (ii) killing a cow, (iii) killing a woman, (iv) killing a child, and (v) Pataki or all 'unlawful' prohibited Sexual relationship.-Rose and Fisher, op. cit., p. 85, f.n. 3.
97. Ibid., p. 85.
98. Extract from the inaugural speech of Prime Minister Padma Shamsher, Gorkhapatra, Vol. 47, No. 117, p. 2.
99. Mohan Shamsher had announced in his first speech after becoming the Prime Minister on Baisakh 18, 2005 V.S. that this Committee was formed to prepare the rules and regulations.

the zilla panchayats. Public Court comprised Courts of First Instance and also the Courts of Appeals.[100]

According to the Constituion of 1948, there was, apart from these courts, also to be a High Court (Pradhan Nyayalaya)[101] which was to be absolutely independent and separate from the executive and the legislature.[102] The old Pradhan Nyayalaya (High Court) was thus given a new shape on the basis of the Constitution of 1948 A.D. Again the Constitution provided for the establishment of special courts for extra-ordinary circumstances and for the preservation of public peace and order.[103]

The Constitution laid down that the Pradhan Nyayalaya (High Court) would consist of a Chief Justice and not more than twelve Judges to be appointed by the Prime Minister.[104] However, apart from these additional judges could be appointed on the recommendation of the Chief Justice, for a period of not more than two years. They had all the powers of a judge of the High Court.[105] A Judge of the High Court was to hold office until he attained the age of sixty-five.[106] A judge could resign by having his letter of resignation addressed to the Prime Minister. He could be removed from the office by the Prime Minister on a joint address by the Legislature praying for his removal on ground of proved misbehaviour

100. Art. 48 and 49.
101. Pradhan Nyayalaya (High Court) was established in the year 1997 Sambat, (Bhadra 1, 1997 V.S. August 1940 A.D.). Later on, another body was formed to supervise this body which was known as 'Mamila Niksari'. This body was directly controlled by the Maharaja of Nepal and the Mukhtiyar was to aid and advise him.
102. Art. 53(a).
103. Art. 51.
104. Art. 53(b).
105. Art. 53(b).
106. Art. 54.

or incapacity.[107] It was a court of record and was given jurisdiction to supervise the lower courts.[108] But in fact, the Pradhan Nyayalaya (High Court) was not an independent body to safeguard the liberty of the people, but was meant to hear appeals in special cases under such provisions as were to be made under this Act. The Prime Minister had the power of pardon, reprieve, respite or remission of punishment.[109] His directive was law and his decision was final.

There was a judicial committee of twelve members from among the members of the legislature which was to act as the Highest Court of Appeal in special cases under such provisions, as may be made from time to time, to frame rules and regulations for the administration of justice and to settle disputes regarding the interpretation of any of the provisions of this act or rules framed thereunder.[110]

This Constitution had also provided for the appointment also an Advocate-General, who was to be appointed by the Prime Minister to give advice to the government upon such legal matters as may be referred to him by the government. He could hold office during such period as he would enjoy the pleasure of the Prime Minister. The size and amount of his remuneration was to be determined by th Prime Minister himself.[111]

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107. Art. 54 (a-c).
108. Art. 56.
109. Art. 59.
110. Art. 52. Such Committee shall be formed from among the members of the legislature. Among them two members shall represent with special qualification from outside legislature also But such type of committee was never formed in the Rana period.
111. Art. 12 (a-c).

This Constitution also provided for an Auditor-General who was to be appointed by the Prime Minister. It was the duty of the Auditor-General to examine and audit the accounts of the State. He could be removed from office in the same manner as a Judge of the Pradhan Nyayalaya (High Court). He was to submit to the Prime Minister's reports relating to the state accounts for being laid before the legislature.[112] So far the people as such had no knowledge of the national revenue and expenditure and there was some resentment on this score. Prime Minister Padma specially mentioned in his inaugural address about it. Many people seem to be labouring under a misconception, he said regarding national revenue and expenditure:

> "any people seem to be labouring under a misconception regarding our national revenue and expenditure. Now that this subject has also been placed within the jurisdiction of the legislature, it is hoped that such misconception will be removed. The provision made in the act for the appointment of an Auditor-General will also, I hope, serve to express our intention to help in the removal of such a suspicion."[113]

This Constitution also set-up the institution of Public Service Commission, members of which were to be appointed by the Prime Minister.[114]

The main object of this Constitution was said to be to establish a Constitutional government in the country for the first time in the history of Nepal. The main aim of Maharaja Padma was to establish a government of popular representatives, to make public the national budget, to guarantee certain funda-

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112. Art. 62 (a-b).
113. Gorkhapatra, Vol. 47, No. 117, p. 3: Peaslee, op. cit., pp. 507-8.
114. Art. 65 (a-c).

mental rights to the people, to establish an independent judiciary and to make the people participate in public affairs on the basis of the Government of Nepal Act of 2004 Sambat (1948 A.D.). The Constitution itself had stated:

> "At the expiration of seven years from the commencement of this Act or if possible earlier as His Highness the Sree 3 Maharaja, in his sole discretion, may determine, His Highness the Sree Tin Maharaja shall appoint a Commission as near half of whom as possible shall be elected by the Legislature for the purpose of enquring into the working of the Government, the growth of education, and development of representative institution and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to extend, modify or restrict the degree of constitutional advance then existing therein. The Commission shall also enquire into and report on any other matter which may be referred to the Commission by His Highness the Maharaja and he shall on the report of this Commission, he shall take such action as may be deemed necessary and desirable for implementing the recommendation of the said Commission."115

This Constitution, many provisions of which were liberal in spirit and which envisaged to a limited extent participation of the representatives of the people in the government was not to the liking of the senior Rana and the Bharadars. Such was their hostility towards the new Act and its initiator that Padma Shamsher even felt that there was a threat to his life and decided to leave Nepal for India (February 15, 1948) and finally resigned from the post of Prime Minister.

The Government of Nepal Act 2004 V.S. (1948 A.D.) was promulgated on Magh 13, 2004 V.S. (January 26, 1948 A.D.). But this Constitution could not work fully within a year as had been promised because of the antipathy of Padma's successor, Maharaja Mohan Shamsher, suspended most of the articles of the Constitution,

115. Art. 68 (a-c).

especially those relating to the fundamental rights, which were objectionable from his point of view.[116]

Mohan Shamsher set up a new 'Baindhanik Samiti' (Constitutional Committee[117]) to prepare rules and regulations regarding elections and functions of the Panchayats.

In the year 2006 V.S. (1950 A.D.) this Committee framed a Code to regulate the form and functions of all the village Panchayats. The Gram Panchayat Act 2006 V.S. (1950 A.D.) and the Panchayat Adalat Ain 2006 V.S. (1950 A.D.)[118] were framed by the Government of Nepal on the recommendation of the Baidhanik Samiti (Constitutional Committee). These were notified all over the country through Sanad and Isthihar (Legislative-cum-executive

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116. When Mohan Shamsher became officiating Prime Minister, he issued ordinances suspending most of the articles relating to the fundamental rights guaranteed by the Government of Nepal Act 2004 V.S. (1948 A.D.), by virtue of the powers granted to him by Lal Mohar and Panjapatra. See Gorkhapatra-Khandganisana and Isthihar, Gorkhapatra, Chaitra 31, 2004 V.S. Vol. 47, No. 150; Baisakha 9, 2005 V.S. Vol. 48, No. 4, See Appendix. 6.(I and II).
On his becoming the Prime Minister and Supreme Commander-in-Chief (Sree Tin Maharaja) a new ordinance relating to the rights of the Citizens in place of the suspended fundamental rights, was issued by Mulki Adda, Sawal Department on Baisakha 18, 2005, V.S. See Gorkhapatra, Vol. 48, No. 31 und Gorkhapatra Asad 15, 2005 V.S. See Appendix. 6 Later on, he promulgated an act relating to Personal Freedom on the recommendation of Baidhanik Samiti on Aswin 2, 2006 V.S. (1949) In this act there were altogether 21 articles. However, it did not provide for political liberties. Gorkhapatra, Vol. 50 No. 60, See: Byakatigat Swatantratako Ain, 2005 V.S.
117. Baisakh 18, 2005 V.S. See: Gorkhapatra, Vol. 48, No. 31.
118. Gram Panchayat Ain 2006 and Panchayati Adalat Ain 2006 V.S. Gorkhapatra, Vol. 50, No. 96-104, Kartik 26, 2006 V.S.
- These copies were published by Ministry of Law HMG/Nepal, 2013 V.S. Published by Gorkhapatra Chapakhana.

document and General Notice). These acts were related to Gram Panchayat and Panchayat Judiciary on the basis of the Constitution of 1948 A.D. According to these Acts, the Gram Panchayat was to consist of five to fifteen members to be elected directly by secret ballot on the basis of adult franchise. It empowered a village Panchayat to hold a fund not exceeding the amount of Rs 100 for minor works of construction and management and to try and settle Law-suits. It was privileged to impose a fine amounting up to Rs 25/- or imprisonment for a maximum period of three months. Elementary Civil and Criminal justice was to be administered by the village Panchayat.

As already stated earlier, Art. 17-19 of the Act had provided for municipal government.[119] The Kathmandu Municipality came to be composed of thirty-one members of whom twenty-one were elected by the public on the basis of adult franchise. Ten members were nominated by the government. It may, however, be noted that the Chairman of the Municipality was appointed by the government and the Vice-Chairman was elected by the members of the municipality.

For the municipalities of Patan, Bhaktapur and Birganj elections were held later on in Jestha, 2004 V.S. These four municipalities (Nagar Panchayats) had been organized under the Act of 1989 V.S. But a body was set up to draft a new municipal Act, consisting of elected as well as nominated members. This Committee could not function as its eleven elected members resigned in the first instance. Out of the remaining ten members sometimes

119. On the basis of the Municipal Act of 1989 V.S. (1933 A.D.) elections were held for Kathmandu Municipality in 1949 A.D.

after six again left, with the result that this body ceased to exist. Therefore, the task of drafting the new municipalities act fell on the Baidhanik Samiti and in 2006 V.S. it was promulgated.

The Zilla Panchayat (District Panchayat) Act 2007 V.S. (1950 A.D.) was brought into force on Sravan 32, 2007 (1950 A.D.) by announcement through Sanad and Isthihar on recommendations of the Baidhanik Samiti (Constitutional Committee).[120] According to this Act, there was to be a Zilla (District) Panchayat in each of the thirty-two Zillas (Districts). The Pradhan Panchas of Gram Panchayats and Nagar Panchayats were to elect from among themselves the members of the Zilla Panchayat, whose number could be from fifteen to twenty. In this way the thirty-two Zilla Panchayats of the Kingdom shall return Pradhan Panchas to the Rastra Sabha, the Lower House of the State Legislature.

All this was a process towards establishing a comprehensive Panchayat structure from the level of the Gram Panchayat to that of the Rastra Sabha. According to the report published by the Secretary of the Baidhanik Samiti, the Government set-up about one-hundred and fifty-eight gram Panchayats during 2007 V.S., out of 577[121] the total number of Gram Panchayats under the Gram Panchayat Act of 2006 V.S. (1950 A.D.).[122] The elections to these bodies were held on the basis of adult franchise. On the recommendation of the Baidhanik Samiti the Zilla Panchayat Act was imple-

120. Gorkhapatra, Vol. 51, No. 54.
121. Terai area - 11 Zillas. There are 195 Panchayats, In Behar, 10 Zilla - 382 Panchayats.
122. Report submitted by the Secretary of 'Baidhanik Samiti' (Constitutional Committee) Col. Suvarna Shamsher before the Parliament on the inauguration day Aswin 7, 2007 V.S. (September 22, 1950 A.D.) Gorkhapatra, Vol. 51, No. 60, Devakota, op. cit., pp. 726-33.

mented and the various Zilla Panchayats began to send their representatives to the Rastra Sabha.[123]

On Aswin 6, 2007 V.S. (September 22, 1950), Prime Minister Mohan Shamsher convened the State Legislature to which he gave the nomenclature of '<u>Parliament of Nepal</u>', claiming that he had set up the Central Legislature in accordance with the Constitution of 2004 V.S. (1948 A.D.).[124] These measures reflected a very poor attempt on his part to carry out the promised reforms. He summoned the so-called Parliament after eighteen months of his rule and appointed one of the elected members of Rastra Sabha to his Council of Ministers[125] and set up the Administrative Committee.[126] But all this meant nothing because the Prime Minister remained an autocrat in practice.

Mention may be made of four important events taking place in the last phase of the Rana period. The first was the inaugural speech delivered by Prime Minister Mohan Shamsher on the opening of the Central Legislature. The second was the special session

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123. Ibid., p. 728. See Appendix. 7 (II).
124. <u>Gorkhapatra</u>, Vol. 51, No. 60, pp. 1-4; Devakota, op. cit., pp. 734-38.
125. He had appointed Gaya Prasad Shah to the Ministry.
126. According to Art. 13 of the Constitution various Committees were formed after 30 months of the promulgation of the Government of Nepal Act 2004 V.S. (1948 A.D.). Twelve Committees were formed under the Chairmanship of Rana family members specially those who were in the role of succession and these included many as nominated members apart from civil and military officials, the elected members. These twelve committees were: health, education, forest, council of industries, small scale industries, panchayats, agriculture, transport, justice, postage, public works and food. Gorkhapatra, Vol. 51, No. 75. Aswin 20, 2007 V.S. See Appendix. 8.

which was convened to "dethrone" King Tribhuwan Bir Bikram Shah Dev and to have in his place Gyanendra Bir Bikram, a five year old grandson of the King. The third was to consider the letter of the Government of India relating to Indo-Nepal relations after the event of King Tribhuwan's taking political asylum in India, and the fourth was the promulgation of a Constitution, more democratic than the one drafted by the Constituent Assembly, in the wake of the revolution against Rana -archy and the reinstatement of King Tribhuvan.

On Aswin 6, 2007 V.S. (September 22, 1950 A.D.) Mohan Shmsher convened the State Legislature. He inaugurated the State Legislature and tried his best to impress the public opinion abroad that his regime actually enjoyed the support of his "subjects". He declared the nomination of two elected members of the Assembly to his Council of Ministers in accordance with the provisions of the Constitution of 2004 V.S. (1948 A.D.).[127]

Secondly, he convened a special meeting of the courtiers (Bhardars) and the members of parliament to give information to it regarding the role played by King Tribhuwan on political affairs. So a resolution was tabled which was adopted by the members of the Parliament and courtiers (Bharadars) to dethrone King Tribhuwan Bir Bikram Shah and to declare Prince Gyanendra Bir Bikram Shah Dev, a five year old grandson of King Tribhuvan, as the new King of Nepal.[128]

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127. Gorkhapatra, Vol. 51, No. 6, pp 1-4; Devakota, Ibid., pp. 734-738.
128. Maharaja Mohan Shamsher informed the members of Parliament and Bharadars and the resolution approved by these members. Gorkhapatra, Vol. 51, pp. 1-4. Extraordinary Issue. See: Devakota, op. cit., pp. 27-33; Gupta, op. cit., p. 46. About the signature copy see, Gorkhapatra.

Thirdly, when the revolution against Rana autocracy was in full swing, he decided to refer to the legislature the letter of the Government of India relating to King Tribhuvan Bir Bikram Shah Dev and the constitutional reforms in Nepal. He had submitted a proposal before the State Legislature (Parliament) that a new Constitution should come into force by 2009 V.S. (1953 A.D.) which would be drafted by a new Constituent Assembly, a Cabinet would be formed with three popular representatives, the suspended and so far unoperative provisions of the Constitution of 1948 would continue,[129] etc. This was in fact, only a farce. It was announced to draw the attention of foreign powers and to gain the support of those who were opposing the Rana rule. These proposals were rejected by the Nepali Congress, which had launched a movement for ending the Rana rule.

Lastly, the Prime Minister made a public declaration on 8 January, 1951, that King Tribhuvan Bir Bikram of Nepal would continue to be the legal sovereign of Nepal.[130]

Assessment :

The Government of Nepal Act 2004 V.S. (1948 A.D.) may be looked upon as a landmark in the Constitutional history of Nepal,

129. He had called a special session of the Parliament on Poush 8, 2007 V.S. (December 23, 1950), Gorkhapatra, Vol. 51, No. 105.
Gorkhapatra, Vol. 51, No. 110.
Anirudhra Gupta, - Politics in Nepal,(Bombay,1964),p.47.
"Parliament meets to discuss Constitutional Reforms", Nepal News Bulletin, No. 29 (1950), (typescript), Ibid., p. 47, f.n. 84.

130. Maharaja Mohan Shamsher's declaration.
Gorkhapatra, Vol. 51, No. 110, p. 1.
Gupta, Ibid., p. 48.
Statesman, Calcutta, Jan. 9, 1951.

as for the first time a Constitution had been drafted. But this act was legislated at the fag-end of Rana period. It contained no provision leading to public welfare, establishment of a genuine represetative administrative system, for public participation in administration, or for social justice and economic equality. Examples of respect for public opinion and the establishment of a welfare-oriented system through a Constitution, granted by the supreme autocrat as a special favour, are rare in world history. As a matter of fact a person granting a Constitution always jealousy safeguards his own interests and prerogratives Padma Shamsher obviously could never prove an exception to this supreme consideration. Therefore, a cursory glance at the Constitutional Act is enough to convince one that the will to preserve the status-quo in the government of the country was the motivating factor behind the act of granting a constitution.

> "One may find some favourable points about the 1948 Constitution in as much as it regularised the system of government in the country for the first time in the history of Nepal and laid down a kind of a Constitutional check, however weak it may be, on the wishes and whims of the ruling individual. Certainly the Rana Constitution had for the first time accepted in principle some kind of representative rule, provided some fundamental rights, including the freedom of speech where there had been none, and immunity against arrest even to the members of the Legislature when it was in session. Keeping in view the prevailing conditions and the system of Government, it has got to be admitted that it had its own significance in the evolution of the constitutional history of modern Nepal."131

131. B.B. Karki, "Aspects of Panchayat System", Nepal Today, Vol. 7, No. 2, December 15, 1967, p. 1214.

(II)

Fall of the Rana Rule :

The policy of preserving the status quo pursued by the new Prime Minister Maharaja Mohan Shamsher caused political unrest.[132] He has suspended most of the articles of the Government of Nepal Constitutional Act 2004 V.S. (1948 A.D.) one day before its implementation and announced a new body, the "Baidhanik Samiti (Constitutional Committee) to prepare rules and regulations regarding elections and functions of the various Panchayats.[133] This despotic attitude and the lingering policy of the Prime Minister made the Nepali National Congress and even the King suspicious of his intentions.[134] The Congress demanded the formation of a democratic government immediately or it threatened launch a mass movement to end Rana regime.[135] Some youngmen of Kathmandu formed a party named 'Nepal Praja Panchayat', which demanded that the government be recognized according to the Constitution of 1948, but the government banned the party. The

132. See, f.n. 116 of this Chapter.
133. Khadga Nisana and Isthihar, 2005 V.S. ....
Gorkhapatra, Vol. 48, No. 31, 2005 V.S. and Vol. 50, No. 69, 2006 V.S.
134. The Nepali National Congress Executive Committee passed a resolution and demanded reforms. See; Regmi, op. cit., p. 212; Gupta, op. cit., pp. 29-30; Balachandra Sharma, Nepalko Aitihasik Ruparekha (Banaras, 2008 V.S.), pp. 374-75; Dhundiraj Bhandari, Nepalko Aitihasik Bebachana, (Banaras, 2012 V.S.), pp. 522-23.
135. ~~Gupta, op. cit., p. 165; Joshi and Rose, op. cit., p. 71.~~
Gupta, op. cit., p. 165; B.L. Joshi and Leo E. Rose, Democratic Innovations in Nepal : A Case Study of Political Acculturation. (Berkeley, 1966), p. 71; R.S. Chauhan, The Political Development in Nepal (Conflict between Tradition and Modernity), (New Delhi, 1971), p. 24.

leaders and workers of the party were arrested. In the meantime, an attempt was made for creating a revolt in the army by the newly formed political party, the Nepali Congress.[136] But the Rana government arrested the Nepali Congress leaders, who were in Kathmandu and several 'C' class Rana Military Officers. The officers serving the Royal Family were also arrested for their complicity in the plot.[137] The Ranas tried their best to involve King Tribhuvan also in this plot, as they suspected that this plan had been blessed by the King, as in the 1936 conspiracy.[138] At that time Mohan Samsher inaugurated Parliament as provided for in the Constitution of 1948 (2004 V.S.).[139] Both Houses were filled with Ranas and their followers, and even the so-called representatives in the Lower House were appointed without even fulfilling the formality of election. At the same time the Rana government decided to give capital punishment to ten persons

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136. The Government of Nepal banned the Nepali National Congress and the Nepal Praja Panchayat. Ibid., p. 43. Later on, on September 29, 1950, Prime Minister Mohan Shamsher officially announced that an attempted plot, engineered by the Nepali Congress to murder certain high officials of the state, including himself has failed. - Bhola Chatterji, A Study of Recent Politics, (Calcutta, 1967), p. 81.
137. Chatterji, Ibid., p. 43; Gorkhapatra, Vol. 51, No. 72; Chauhan, op. cit., p. 31.
138. An extremist group the Praja Parishad was founded in 1935 under a thick clock of secrecy in the heart of Kathmandu. - Jagat Bahadur Singh, Nepal Praja Parishadko Samkshipta Itihas, (Lucknow, 1951), p. 4; Gupta, op. cit., p. 27; Tribhuban Smirti Grantha, (Tribhuban Smaraka Samiti, 2027), pp. 511-528.
139. It would be interesting to note the remarks of the Indian Prime Minister Pt. Jawahar Lal Nehru in the 1948 Constitution. In the Indian Parliament making a statement he said: "... although the House will remember that the Constitution of Nepal - I use a strange phrase 'Constitution of Nepal', for Nepal has no Constitution."
A.S. B hasin - Documents on Nepal's Relations with India and China, 1949-66 (Bombay, 1970), p. 26.

involved in the suspected plot of the middle of 1950 A.D. According to tradition, usages and practices till then followed, 'no life punishment could be given in Nepal without the Lal-Mohar granted' by the King'. As such Mohan Shamsher requested King Tribhuwan for using "Lal Mohar" as required for punishing these men. The King indirectly declined the request, as he deferred his approval on the pretext of feigned illness.[140] In fact, the Rana government was faced with a political crisis. The Rana government was fully centralized and the Zillas were administered by the "yesmen" of Mohan Shamsher. The administration was paralysed. At this time, the Nepali Congress decided at its historic conference at Bairganiya (Bihar) in September 1950 that a letter be sent to Mohan Shamsher asking him to reform the government on a democratic basis, failing which the party would launch an armed movement in near future.[141] Suddenly on November 6, 1950 A.D. King Tribhuwan, along with other members of the Royal Family, took political asylum in the Indian Embassy, as he suspected a Rana government plan to force him and the Crown Prince Mahendra Bir Bikram Shah to abdicate and relinquish their rights to the throne.[142] The Prime Minister, thereupon sent representatives to talk with the King but the latter refused to see them. Then Mohan Shamsher convened a special session of the Parliament, which along with the courtiers (Bharadars) unanimously approved of his proposal to enthrone the five-year old Prince Gyanendra Bir Bikram Shah.[143] On

140. Joshi, and Rose, op. cit., p. 170.
141. Nepal Today (Calcutta), Vol. 18, See, Joshi & Rose, op. cit., p. 72; Gupta, op. cit., p. 170; Chauhan, op. cit., p. 28.
142. Gorkhapatra, Vol. 51, No. Extraordinary Issue; Devakota, op. cit., p. 26; Joshi and Rose, op. cit., p. 73.
143. Ibid., Vol. 51, No. Extraordinary Issue.

November 10, King Tribhuvan and other members of the Royal Family, left for New Delhi.

At the same time disturbances broke out in the various parts of the country, as the Mukti Sena (Liberation Army) and the Congress launched insurrectionary movements. Many Zillas (districts) of Nepal were captured and provisional governments were formed therein.[144] Public demonstrations were held in many parts of the country against the Rana regime and demanding establishment of a democratic government under the Crown.[145] The centralized Rana autocratic administration was paralysed. Foreign Powers also resented the hasty action of Mohan Shamsher.[146] In the Rana family also specially among 'C' class Rana members, dissatisfaction developed and protest was made against the oppressive policy of the government. The disgruntled Ranas claimed equal representation for all classes of the Rana family without any discrimination between 'A', 'B' and 'C' classes and interceded for the restoration of King Tribhuwan.[147] Now,

144. The following districts were captured and provincial governments were formed. The captured districts were : Bhairawa, Tharithum, Bhojpur, Bandipur, Rangeli, Haraicha, Janakpur, Gaur, Athamanja, Jhapa, Gauriganj, Udaipur Gari, Kailali Kanchanpur, Narayanpur, Bhagawanpur, Nawalpur, Parasi, Jhapa, Anarmani Birta Tokla, Nakalbandha, Dholamari, Malaketh, Dhangari, Baitadi, Deoti, Dailekh. For detail see Kashi Prasad Srivastava, Nepal Ki Kahani (Hindi) (Delhi, 1955), pp. 150-57; Chauhan, op. cit., f.n. 88.
In the following districts provincial governments were formed: Palpa, Biratnagar, Birgunj, Dharn, Dhankuta, Bhojpur, Bhairawa, Ilam, Kailali Kanchanpur etc. See, Joshi and Rose, op. cit., p. 74-76; Gupta, op. cit., pp. 43-45; Chauhan, op. cit., p. 32; Sharma, op. cit., pp. 382-85; Bhandari, op. cit., pp. 337-40.
145. Joshi and Rose, op. cit., pp. 74-75; Gupta, op. cit., pp. 45-46; Chauhan, op. cit., pp. 32-33.
146. Ibid., p. 74.
147. Ibid., p. 75; Gupta, op. cit., p. 47; Chauhan, op. cit., p. 32.

when the Prime Minister became weak both from within and without, he decided to start negotiations with the King and the Nepali Congress through the Government of India. At that time, on December 8, 1950, the Government of India sent a memorandum to the Government of Nepal.

> "The Government of India's primary objective is that Nepal should be independent, progressive and strong. For this purpose they regard immediate constitutional changes, which will satisfy popular opinion and be acceptable to important non-official organisations of Nepalese nationals as urgent. They suggested the following measures :
>
> (1) that a Constituent Assembly composed entirely of properly elected members should be brought into being as soon as possible to draw up a Constitution for Nepal;
>
> (2) pending the meeting of the Constituent Assembly mentioned above an interim government, which will include persons representatives of popular opinion and enjoying public confidence should be established. This body should also include members of Rana family, one of whom should be Prime Minister. This body should act as a Cabinet on the principle of joint responsibility and should frame its own rules of business; and
>
> (3) King Tribhuvan should continue as King in the interest of the realm."[148]

The representatives of the Government of Nepal, Lath-Shaba[149] General Keshar Shamsher and Major-General Vijaya Shamsher (son of Maharaja Mohan Shamsher) visited New Delhi on November 27,

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148. Statement of Mr. Jawahar Lal Nehru, The Prime Minister of India, in Parliament, New Delhi, December 21, 1950. See; Bhasin, Ibid., pp. 34-35; Joshi & Rose, Ibid., p. 77.
149. In the role of succession, this post is third in position. The old Jangi Adda (Defence Department) was replaced with a new Jangi Bandobasta Office under the supervision of Jangi Lath (Lath-Sabha) in the time of Chandra Shamsher.

1950, with a reply to the memorandum of the Government of India.[150] At that time, King Tribhuvan also made an appeal by issuing a statement from New Delhi on December 22, 1950 expressing his hope that the future political order in Nepal would be based on the principles of public participation and representation.[151] Following this and keeping in mind the Indian memorandum, Mohan Shamsher convened a special meeting of the Parliament and referred to it the following suggestions:

(1) immediate formation of a Cabinet of nine members, among whom three would be popular representatives. The Cabinet was to function on the basis of joint responsibility;

(2) a Constituent Assembly would be convened within three years on the basis of adult franchise, to form a new Constitution; and the provisions of the Government of Nepal Act 2004 would continue to be operative until the new Constitution was framed;

(3) the formation of political parties would be allowed 'provided they keep within the law'; and

(4) the Nepalese residing abroad could return to Nepal barring the 'traitors and criminals'.[152]

However, in this proposal the Prime Minister made no mention of the position of King Tribhuvan, or, the role of the democratic

150. The Statesman, Nov. 26, 1950; Gorkhapatra, Vol. 51, No. 92, Marga 12, 2007.
151. The Times of India, New Delhi, December 23, 1950.
152. Maharaja Mohan Shamsher placed the following proposals before the Nepalese Parliament on December 19, 1950 : Gorkhapatra, Vol. 51, No. 105; 'Parliament Meets to discuss Constitutional Reforms' - Nepal News Bulletin, No. 29, (1950) 2 (typed script); Gupta, op. cit., p. 47, f.n. 84; Devakota, op. cit., pp. 39-43; Joshi and Rose, op. cit., p. 77.

parties in Nepal. In New Delhi, the Government of India had decided to continue to recognize King Tribhuvan as Nepal's Legal sovereign.[153] Clearly, there was no positive outcome of the first round of negotiations between the Governments of Nepal and India.

At this time the Rana Government had become very weak as a result of opposition both within the country and in India. At least forty high-ranking Rana family members took their stand against Prime Minister Mohan Shamsher and handed in their resignation demanding also that Tribhuvan should continue as the King of Nepal in the interest of the realm.[154]

Negotiations were again started and these concluded on 1st January 1951 A.D. As a result of these negotiation with the Government of India the Government of Nepal agreed:

(i) to recognise King Tribhuvan as the King of Nepal;

(ii) to form an interim Cabinet of fourteen members half of whom would be popular representatives;

(iii) to hold elections to a Constituent Assembly by 1952 A.D.; and

(iv) to give legal sanction to political parties functioning within or outside Nepal and to proclaim a general amnesty after arms taken up since November (Kartick) last are laid down,

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153. Announcement by the Prime Minister of India, Mr. Jawahar Lal Nehru in the Indian Parliament, December 6, 1950 A.D. See: Bhasin, op. cit., p. 25 (Parliamentary Debates, Part II, Dec. 6, 1950: Cols. 1267-71).
154. Last week of December, 1950- Gupta, op. cit., p. 47, Chatterji, op. cit., pp. 139-140.

violence abjured and a cease-fire effected.[155]

Prime Minister Mohan Shamsher called a special meeting of the Parliament to which he announced the above-mentioned concessions.[156] This announcement was welcomed by King Tribhuvan and the Government of India. On January 10, 1951, the King appealed to the Nepali Congress to call halt to the Revolution.[157]

The Third Round of talks, which took place in New Delhi in the first week of February 1951, was popularly known as '<u>Tripatie Talk</u>' as it was held between King Tribhuvan, the then Rana Government and the Nepali Congress representatives.[158] In this conference Nepali Congress placed the following demands as the basis for discussion :

(i) that all the seven popular representatives in the Interim Cabinet should be the nominees of the Nepali Congress;

(ii) that the key portfolios should be allotted to the popular representatives so that they could be in control of the administration of the state;

(iii) that the Cabinet should be responsible to the King so long as a duly elected parliament was not set up; and

(iv) that reforms should be proclaimed by the King.[159]

155. Declaration by His Highness the Maharaja Mohan Shamsher JBR in the Nepalese Parliament, Gorkhapatra, Vol. 51, No. 110. Gupta, op. cit., p. 48; Joshi and Rose, op. cit., p. 78; Chauhan, op. cit., p. 33.
156. January 8, 1951, A.D. Gorkhapatra, Ibid.,
157. January 10, 1951, A.D., Gorkhapatra, Vol. 51, No. Extra-ordinary Issue; The Times of India, New Delhi, January 11, 1951; The Hindu, Madras, January 11, 1951.
158. It is known as Delhi Settlement of 1951. This was the first time that the members of the Nepali Congress got chance of an audience with King Tribhuban.
159. The Hindu, Madras, January 29, 1951; Gupta, Ibid., p. 49; Joshi & Rose, Ibid., p. 78; Chauhan, Ibid., p. 33.

While discussions were going on Dr. K.I. Singh and other 300 armed men stood against the proposals. But on February 12, 1951, a settlement with some amendments was finally reached to the satisfaction of the three parties, According to the terms of the agreement the number of ministers in the proposed interim Council of Ministers was brought down from 14 to 10, of whom half were to be from the Rana side and the other half from the side of the Nepali Congress. The formula was accepted by both the sides. This is known as the 'Delhi-Settlement or Compromise' of 1951 A.D. "The Delhi-Settlement between the two governments was at best 'a Compromise', a middle way - neither fish nor fowl - so that refused to endorse the deal."

Delhi Compromise or Settlement of 1951

Various comments were made after the formula was accepted by the three parties in 1951. This agreement was at that criticised by various political parties and political observers in Nepal.

The Communist Party of Nepal has charged 'the Delhi Agreement was tantamount to a betrayal of the revolution by the leaders of the Nepali Congress.'[160] Those who had from the outset opposed the Delhi Compromise charged the government with purusing an imbecile and short-sighted policy.[161] The extremist Nepali Congress members, the Praja Parishad, the Nepal Communist Party and Gorkha Dal critisized the Coalition Governmant (formed

160. Jatiya Andolanma Nepal Kamyunist Party, n.p. 113; Gupta, op. cit., p. 201.
161. Ibid., p. 55.

after the Delhi-Compromise). They dubbed the new government as a 'puppet government to follow the dicates of Nehru Government and to put a brake on the growing movement of the peoples of Indda, China and Nepal. This fact is proved by every action taken by the government at the present moment.'

It was said that the Nehru Government had stepped in to interfere in Nepalese affairs, and that the appointments of the Ministers, including that of the Prime Minister were made in New Delhi.[162] After the Gorkha Dal incident, Congress Ministers had charged that the Rana ministers were responsible for the incident and demanded the resignation of Prime Minister Mohan Shamsher. But King Tribhuwan, keeping in view the agreement made out minor changes in the Cabinet. The Nepali Congress Party weekly official organ, "Nepal Pukar" stated icily : 'The lesson of the Delhi Conference is that Nepalese affairs should be settled by the Nepalese themselves. The Nepali Congress leaders should keep in mind that the people were to see how they delivered the final blow to the Rana Rule. If this is not done their prestige would go to the dust.'[163]

The Delhi-Compromise had scored two points. Firstly, it ended the hundred year old Rana rule, and secondly, it restored the legitimate position of the Monarch. Later on following the clash between two groups (Rana and the Congress) 'the king sought to strengthen his position by gaining access to the traditional instruments of power in the form of the army, the police

162. Ibid., pp. 55-56.
163. Nepal Pukar, (Nepali Congress Party's weekly official organ, Kathmandu) 2 (Jestha 8, 2008 V.S.) 2. Gupta, op. cit., p. 63.

and the administrative machinery. "Thus, constitutionally speaking what took place in 1951 was not a revolution but a restoration. But full implications of this were neither understood by the Rana group nor by the Nepali Congress. Both had come to accept the 'Delhi Deal' under pressing circumstances, though later events proved that forced hatch-up between them was never workable.[164] B.L. Joshi and Leo E. Rose have this to say, "Thus, the political change which occurred in Nepal under the diplomatic midwifery of the Indian government was a total political change. It was neither an evolution from nor a modification of the traditional political system, but a brand-new innovation whose basic systemic linkages were with the emerging political structure in independent, democratic India." Again the writers say, 'The Delhi Compromise not only sounded the death-knell of the Rana regime, but also, presumably ruled out the viability of the traditional political process based on the dominance of a few elite families.'[165] Leo E. Rose and Roger Dail correctly point out : "Furthermore, the terms of settlement, the so-called Delhi-Compromise reflected the objectives of the Indian government much more than it did those of the revolutionary leaders."[166] Pashupati Shamsher J.B. Rana had criticised India's vital role in the revolution of 1950 and said that, 'Nepalis found it difficult to believe that India's motive was merely the altruistic one of

164. Gupta, op. cit., p. 52.
165. Joshi and Rose, op. cit., p. 487.
166. Leo E. Rose and Roger Dail, "Can a Mini-State Find True Happiness in a World Dominated by Protagonist Powers: The Nepal Case" (Art.), The Annals of the American Academy of Political and Social Sciences, November, 1969, p. 91.

providing for the greater democratization of Nepalese politics. In a way, the major role India played was in itself detrimental. For "Delhi Compromise" which ended the ancient regime was negotiated, not bètween two Nepalese parties, but the Rana government's representatives and the Indian Government. And many amongst the new elite of the revolution viewed the "Delhi Compromise" as a sell-out of the basic aims of the revolution.[167] R.S. Chauhan has observed, 'This was partly due to the Delhi Agreement itself which had envisaged a new political structure in which feudalistic elements had been given supremacy; and partly due to the great hold of traditional culture on the Nepalese people and the weakness of modernizing forces. Obviously the agreement titled the balance of power in favour of traditional forces ... The Delhi Agreement was, more or less, concluded between the King and the Ranas and the voices of modernizing forces were not taken into account, though an assurance was given for the introduction of modernization.' He further says that, "The Delhi Agreement, thus, released two virtually contradictory political forces -- traditional and modernizing -- and put them face to face to fight against each other for the supremacy of power . The agreement was nothing more than a truce between two rival forces."[168] H.N. Agrawal has expressed his opinion about the 'Delhi Compromise' thus, 'The Delhi-Settlement between the two governments was at best 'a Compromise', a middle way' -- neither fish nor fowl --

167. Pashupati Shamsher Rana, "India and Nepal : The Political Economy of a Relationship" (Art.), Asian Survey, Vol. XI, No. 7, July, 1971, p. 647 and by the same writer the same article in Vasudha, (Kathmandu, 1972), Vol. XIV, No. 5, April - May, 1972, pp. 16-17.
168. Chauhan, op. cit., pp. 35-36.

so they refused to endorse the deal."[169]

Thus, the Revolution brought down the century old Rana Rule. It established a democratic government under a constitutional monarch on February 18, 1951 A.D. (Falgun 7, 2007 V.S.).

169. Hem Narayan Agrawal, The Administrative System of Nepal 1901-1960 (Unpublished Thesis)(Patna University, 1969), p. 281.

CHAPTER III

The revolution of 2007 V.S. (1950-51 A.D.) was an important landmark in the political history of Nepal. It was the revolution of the people supported by the King for the establishment of a constitutional government. A struggle for democratic rights had been going on for a long time. In the process the King came to be recognized as the symbol of 'New Nepal' that was struggling to overthrow the feudal shackles of Rana rule. The revolution of 2007 V.S. (1950-51 A.D.) brought about the collapse of the Rana autocracy.

The main causes of the fall of Rana autocracy should be stated in terms of (i) fall of the British power and independence of India, (ii) clash among the Ranas for usurpation of power, (iii) changing international politics after World War II, and (iv) the socio-economic disorder in the country. Inspite of other factors, the changing global politics after World War II was in a sense the most important factor in bringing to an end the Rana power in Nepal. Describing the wretched state of affairs under the Rana autocracy in Nepal, Lt. General Mrigendra Shamsher wrote: "Had the Rana administration been wholesome and healthy, it would not have collapsed within hundred days. It was rotten and hollow within, stinking like a gutter. It was a personal Rule or a police State, infested with spies and informers. The head of the government namely the Prime Minister,

wielded all the powers. He was the de facto sovereign. Under this rule social and political assemblies and associations were disallowed. The public was afraid of investing capital in industrial enterprises. The system had in it the seeds of its own destruction, which finally came about at an opportune time in the years 1950-51.[1]

THE GOVERNMENT OF NEPAL ACT 2007 V.S.

The Interim Government of Nepal Act 1951 A.D.

King Tribhuwan made a proclamation on Falgun 7, 2007 V.S. (February 18, 1951 A.D.) in which he declared that "the system under which his ancestor, Surendra Bikram Shah, had handed over the reigns of administration and the Prime Ministership to Jang Bahadur and his successors in 1903 Sambat (1846 A.D.) has been terminated in view of his desire to administer the country so that the people should henceforth be governed according to the provisions of the Democratic Constitution framed by a Constituent Assembly elected by them.[2] This was the announcement for the

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1. Mrigendra Shamsher, "The Wretched State of Affairs under the Rana Autocracy in Nepal" (Art. in Nepali), Historical Glimpses of Modern Nepal, (Arya Sanskrit Sangh, Kathmandu, 1969), p. 88.
2. Proclamation of King Tribhuwan Bir Bickram Shah Dev on February 18, 1951, Text released by the Nepalese Embassy, New Delhi (Typescript).
Gorkhapatra, Kathmandu, Vol. 51: Nepal Gazette, Voll 1, No. 3, Bhardra 8, 2008 V.S.; Grishma Bahadur Devakota, Nepalko Rajnaitik Darpan, (Kathmandu, 2016 V.S.), pp. 49-52; Awaja Daily (Kathmandu), Vol. 1, No. 1; Anirudhra Gupta, Politics in Nepal- A study of Post-Rana Political Development and Party Politics, (Bombay, 1964), p. 51; Bhuban Lal Joshi and Leo E. Rose, Democratic Innovations in Nepal: A Case Study of Political Acculuration, (Berkeley, 1966), p. 83; R.S. Chauhan, The Political Development in Nepal 1950-70 (Conflict between Tradition and Modernity), (New Delhi, 1971), p. 142.

establishment of democratic institutions in Nepal. The main object of the revolution of 2007 V.S. (1950-51) was to establish a democratic and constitutional government in Nepal. It was declared to be the duty of the government to establish a 'fully democratic political system functioning in accordance with a Constitution prepared by a Constituent Assembly and the government was instructed to make arrangement for elections if possible before the end of 1953.[3]

For the smooth working of the government, an Interim Constitution, namely, the "Interim Government of Nepal Act 1951 A.D.", was promulgated by the King.[4]

The Preamble stated that :
"Until the Constitution is not framed and promulgated, the administration of the country should function according to a Constitution and certain rules and principles."[5]

The most important point to be remembered in this regard is the statement which says : "The King of Nepal, on the advice of the Council of Ministers is accordingly pleased to ordin and promulgate the following Act."[6] It was in marked contrast to the

3. Delhi-Settlement of 1951.
4. Nepal Gazette, Vol. 1, No. 3 (Bhadra 4, 2008 V.S.).
5. Para Second, Preamble of the Interim Government of Nepal Act 1951.
6. Ibid., Para last.
This Act was drafted by Government officials and was approved by the Council of Ministers on 30 March 1951 (Chaitra 17, 2007 V.S.) and assented to by the King of Nepal, Tribhuvan Bir Bikram Shah Deva, on April 10, 1951 (Chaitra 29, 2007 V.S.)- Nepal Gazette, Vol. 1, No. 3.
This Constitution was drafted by the Nepalese officials with the help of Mr. Govinda Narayan, an ICS officer from India who was appointed as Secretary to the King of Nepal for the time being. This Constitution was drafted on the
Continued on next page

Constitution of 1948 A.D. (2004 V.S.) where the Preamble simply states that the Constitution was given by the Rana Prime Minister. It is significant, therefore, in two respects: that the power was no longer in the hands of the Ranas, and that the King was acting as a Constitutional monarch.

The Government of Nepal Act 2007 V.S. (Interim Government of Nepal Act 1951) came into force on 17th Chaitra, 2007 V.S. (March 30, 1951 A.D.). It had only 47 Articles which were divided into VII Parts. However, in the eight years that followed, six amendments were made to this Act. This Constitution came to have 73 Articles, divided into VII Parts. This Constitution lasted for eight years (1951-1959 A.D.) (2007-2015 V.S.).

Nepal Antarim Sambidhan 2007 V.S. (The Interim Government of Nepal Act (1951 A.D.) at work and in practice :

King Tribhuwan made a historic proclamation on Falgun 7, 2007 V.S. (February 18, 1951 A.D.) promulgating the Interim Government of Nepal Act of 1951 A.D. (2007 V.S.). The Preamble

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Continued from previous page
basis of the Government of India Acts of 1935 and 1947. Later on a batch of three top Indian Civil Servants sent out from New Delhi at the request of the Government of Nepal to make up for the lack of indigenous "know how" in the techniques of modern administration. They worked in Nepal for about a year and assisted in the preparation of the Interim Government Act of 1951 also. - See, Mangal Krishna Shrestha, Public Administration in Nepal, (Department of Publicity, HMG/Nepal, 1965), p. 10.

Mr. B.P. Koirala who was the Home Minister at that time has claimed that he had also made some contribution in drafting this Constitution. - See, Bishweshwar Prasad Koirala, "Rajtantra", Tarun, Bulletin No. 4, Part II (Varanasi), April, 1971, p. 18.

to the Act stated as follows :

> "Whereas by his Proclamation dated February 18, 1951, His Majesty the King of Nepal expressed his desire and resolve that his people should thenceforth be governed according to the provisions of a Democratic Constitution framed by a Constituent Assembly elected by them;[7]
>
> And whereas by the same Proclamation His Majesty the King of Nepal had expressed his desire and resolve that until such Constitution was framed there should be a Council of Ministers to aid and advice him in the exercise of his functions.[8]

The Preamble also made clear that,

> This Interim Constitution was the work of the King and the expression of his desire that "during the interim period the Interim Government should function according to a Constitution and certain rules and principles."[9]

In the Royal proclamation of February 18, 1951, the King had stated,

> "........... hereafter our people shall be administered in accordance with a democratic Constitution to be framed by the Constituent Assembly elected by the people. Until such Constitution is framed a Council of Ministers composed of popular representatives having peoples' confidence shall be constituted to aid and advise us in our administration."
>
> "The ministers shall hold office during our pleasure and shall collectively be responsible to Us. It shall be the duty of Our Prime Minister to submit all decisions of the ministry pertaining to the administration of the country to Us. Again it shall be his duty to furnish all information regarding administration as asked by Us from time to time."[10]

The Preamble read together with this proclamation makes it clear that the ministers who were to aid and advise the King were to be his nominee in fact and the representatives of the people in name only. As long as elections were not held, as a matter of fact no other course was also practicable.

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7. Preamble, Para First.
8. Ibid., Para Second.
9. Ibid., Para Third and Fourth.
10. Ibid., Para Second.

DIRECTIVE PRINCIPLES OF STATE POLICY :

The Drafting Committee of the Interim Government of Nepal Act 1951 had recommended the inclusion of Directive Principles of State Policy in the Act. This was approved of by the King and the Council of Ministers with some minor amendments.

Part II of this Act called the Directive Principles of State Policy contained 19 articles. This Chapter may rightly be regarded as a gift of the new Constitution to this country. Never before did any constitutional enactment in Nepal provided for such a Chapter. These articles were divided into two sections, the first part containing Principles to promote the welfare of the people by securing a social order in which justice, social, economic and political would inform all the institutions of national[11] life and the other being related to certain basic rights viz., the right of the people for promoting public welfare, without hampering the interest of the community.[12]

In the period after the first World War, several constitutions like of Weimar, Austria, Spain, and Ireland had included such directives. After World War II many Asian and African countries drafted their Constitutions with similar directives.[13] In

11. Art. 2-12.
12. Art. 13-20.
13. See, the Weimar Constitution of Germany (1919); the Austrian Constitution (1929), The Spanish Constitution (1931), the Irish Constitution (1937), The Constitution of Brazil (1946), The Constitution of Italy (1947) and the Constitution of the Republic of India (1951). See also, C.J. Freidrich, Constitutions and Constitutional Trends since World War II, p. 23.

fact, the idea of stating the Directives of State Policy in the Act of 1951 A.D. was borrowed from the Irish and Indian Constitutions. During the last two decades the framers of these new Constitutions wanted that the government worked positively for the realization of a just order. These principles are of the nature of affirmative instructions to governments for directing their activities to do certain things thereby promoting the realization of the high ideals enshrined in the Constitution. The introduction of this principle seems to be a natural consequence of the urge for the establishment of a democratic set up in Nepal and to guide the state on modern lines, for securing political, economic and social justice. Hence it was not surprising that the framers of the Constitution provided for the Directive Principles of State Policy, and these were at first taken as justiciable rights. In fact, the part dealing with the Directive Principles of State Policy was to a large extent akin to the Parts III and IV of the Indian Constitution which deal with the Fundamental Rights and the Directive Principles of State Policy.

The Act clearly stated : "this part will not effect the existing laws of the country, but they are nevertheless fundamental in the governance of the country." The Act stated further "It shall be the duty of the state to apply these principles in adapting the existing laws as early as possible and in making laws hereafter."[14] The Article clearly indicates that the principles in that part were not to effect the existing laws of the country. Thus it is clear that the Court could not declare any law as null and void. The same article however, declared the

14. Art. 2.

principles as fundamental in governance of the country. It is, however, not clear in the Act, whether these principles could be questioned in any Court or not when they did not affect the existing laws.

In fact, the inclusion of the Directive Principles of State Policy may be more positive in translating the socialist ideas into practice in the modern Constitutions. The new type of government included this Chapter to show that the state must keep in mind the welfare of its citizens while carrying on the administration of the country. The inclusion is undoubtedly very significant. But the principles are merely an instrument of instruction. It is certainly not a positive command to run the government.

According to this Act, the Directive Principles of State Policy would strive to promote the welfare of the people by securing and protecting a social order in which justice social economic and political - would be guaranteed. The state would take steps to organize village Panchayats as units of self-government, to provide for right to work, to spread education, to make effective provisions to secure public assistance in cases of undeserved want. The state was to secure, by suitable legislation or economic organization, work and a minimum wage to all workers, a higher level of nutrition and standard of living and to improve the health of the people, and to reorganize the systems of agriculture and industry. The state was to secure a uniform Civil Code. The state would protect every monument or place of artistic or historic importance. It should promote

international law and respect its treaty obligations in its dealings with other people and encourage settlement of international dispute by arbitration.[15]

The provisions made in this Chapter were valuable. But the articles are mostly copied from the Irish and Indian Constitutions. Though these principles were to give easy satisfaction to the credulous, they can be also said that they represent the hopes and aspirations of the new set-up in Nepal.

FUNDAMENTAL RIGHTS :

In many of the written Constitutions of democracies exclusive Chapters on certain rights, regarded as fundamental to the individual welfare are inserted. The concept of fundamental rights may be said to have originated from the Contractualists of the 17th and 18th Centuries who emphasised the theory of natural rights as the Yardstrick to evaluate state actions.[16] Many countries have been influenced by these theories so they have guaranteed some rights to the people in their Constitutions. Rights came to be regarded as 'those conditions of social life without which no man can seek in general, to be himself at his best'.[17] Because it was the responsibility of the state to create those conditions, it should give necessary powers to the government. The task before the modern Constitution-makers is, therefore, of a two fold nature. While the individual must be given certain basic rights, these should be so arranged as would not hamper the interest of the community.

15. Art. 3-12.
16. Umakant Tewari , The Making of the Indian Constitution, (Allahabad, 1967), p. 110.
17. Harold Laski, Grammar of Politics, p. 91.

The Interim Government marked a great advance on the state affairs which the Ranas had left behind.[18] The self-exiled political leaders had demanded the declaration of Fundamental Rights and the formation of a democratic government. The Constitution of 1948 had guaranteed certain Fundamental Rights at least in form, but even these had been suspended in 1949. But in this Act, the Rights of the People are not separately mentioned but are made part of the Directive Principles of State Policy. The inclusion of these rights in the Chapter on the Directive Principles of State Policy clearly shows that the makers of this act did not want to make a distinction between the Directive Principles properly so called and the Fundamental Rights granted to the individual as had been done in the Indian Constitution.

This Act under the Directive Principles of State Policy, had guaranteed some rights for the public good, or for the maintenance of public order or the security of the State. These rights could be practiced (exercured) in Nepal according to 'Byaktigat Sawtantratako Ain 2006 V.S. (rights of the individual).[19] They fall into seven categories and are justiceable. According to the Fundamental Rights, theory of society should be an association of free and equal individuals united for the protection of their natural rights. It means in case of violation of his fundamental rights, the citizen is entitled to seek redress for the same by appealing to a Court of Law. According to this

18. Gupta, op. cit., p. 57.
19. This is the first time in the political history of Nepal, people had secured political liberties. An Act conferring Fundamental Rights described as 'Byaktigat Swatantratako Ain' was promulgated on Aswin 2, 2006 V.S. - Ainkhana, Nepal Sarkar. Again, in the year 2012 V.S. (1955 A.D.) Nagarik Adhikar Ain 2012 V.S. was promulgated. Nepal Gazette, Vol. 5, No. 14. Lal-Mohar 2012/6/5.

Act, the rights of the citizen included freedom of speech and expression, of peaceful assembly, of forming of associations or unions, of moving freely throughout the territory of Nepal, of residing and settling in any part of the territory, of holding and disposing of property and of practicing any profession or of joining any occupation trade and business. In the eyes of the law, all are equal. There will be no discrimination against any citizen on grounds of religion, race, caste, sex and place of birth. The rights of protection against illegal arrest, of self-defence and personal liberty, except according to procedure established by law or rule made by the government for the public good or for the maintenance of public order or the security of the state, were guaranteed.[20]

By the Third Amendment (1954) of the Interim Government of Nepal Act a great change in the character of the Directive Principles of State Policy was effected. This amendment states, 'No Nepal law whether enacted before or after the commencement of the act, nor no rule or order made under the law, was to be declared as invalid by reason only that that was inconsistent with the directive principles of State policy.'[21]

The main cause leading to this amendment lay in the decision of the Pradhan Nyayalaya (High Court) on 9th November, 1953 A.D. in the case of B.P. Koirala, B.B. Pandey and M.B. Shahi. B.P. Koirala was restricted to Kathmandu Valley on September 20, 1953 by the Deputy Secretary of the Home Ministry on charge of

20. Art. 13-20.
21. H.M. King Tribhuvan's Royal Proclamation, Nepal Gazette, Vol. 3, No. 26.

'having fomented dissatisfaction among government civil servants'. Regarding B.B. Pandey and M.B. Shahi, the Badahakim of West No. 1 had issued an order of internment against them. In both cases, the Pradhan Nyayalaya (High Court) after initial difference among the judges, decided that the internment of the plaintiffs violated Art. 10 of the Interim Government of Nepal Act 1951 A.D. which stated, 'No person shall be deprived of life and personal liberty except according to procedures established by law'. The court gave its judgement that the public Safety Act and the Kathmandu Commissioner's and Majistrate's order were ultra vires of the Constitution as the violated Art. 16 which guaranteed the Nepalese citizens the right to reside and settle in any part of Nepal; that laws which were repuguant to the Interim Government of Nepal Act were invalid, and that the King had no power to enact ligislation as the Constitution was silent on it; that the Prime Minister had no right to issue executive orders and that only the King-in-Council could do so.[22]

To end this Constitutional deadlock between the executive and the judiciary, the King proclaimed a major amendment in the Interim Government of Nepal Act known as the Third Amendment. By this amendment, 'the principle of Part II of the Interim Government of Nepal Act 1951 A.D. viz., the Directive Principles of State Policy were declared as incapable of being enforced by any court of Nepal. No Nepal law, whether enacted before or after the commencement of the Act, or no rule or order made under the law, was to be declared invalid for the reason only that it was inconsistent with the Directive Principles of State Policy'. In

22. Nepal, Kanuan Patrika, Vol. I, No. 2, Decision No. 23.

this way the amendment act declared them only to be general principles that could not be enforced by any Court of Nepal. Thus, these principles became only guidelines and not constitutional directives. This amendment not only degraded the position of these principles but also checked the fundamental rights of the people by curtailing the status of the Pradhan Nyayalaya (High Court). All the provisions relating to the Pradhan Nyayalaya (High Court) were repealed and instead, it was stated : 'There shall be a Pradhan Nyayalaya (High Court) and the powers and functions of the Pradhan Nyayalaya (High Court) shall be determined by law'. It lost its power to punish for its contempt. It was also deprived of its powers of issuing writs of Habeas Corpus and Quo-Warranto, notices and other prohibitory orders. This amendment took away the substance of the fundamental rights of the people. The Act now would recognize these rights but it was not bound to respect these rights. If these rights were violated the individual had no legal remedy.[23]

Originally, in the Interim Act, the Directive Principles of State Policy had a wide significance, as the recognition of conditions necessary for the public good. They imposed certain obligations as the state. By providing socio-economic rights these may in a sense be said to have manifested socialistic ideals. The Government of Nepal had also agreed to include in this part apart from the basic ideals of socialism certain principles of Gandhian socio-economic philosophy, such as establishment of village Panchayat, Cottage Industries, enforcement of prohibition and protection of agriculture etc.

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23. H.M. King Tribhuvan's Royal Proclamation, Magh 7, 2010 V.S., Nepal Gazette, Vol. 3, No. 26.

The Government of Nepal therefore may be said to have come closer to the aspiration of the people by the addition of Chapter II in this Act. It shows that the government has now realized the nature of the real problem of the people. In fact, the act was implemented after the formation of the Rana-Congress coalition government. The Nepali Congress, influenced by socialistic outlook, gave more emphasis for the implementation of these ideals. The role of the state should have become more positive. But the position entirely changed after the third amendment.

The most significant aspect of the Interim Constitution was the formal separation of powers among the three organs, of the overnment, namely, the executive, the legislative and the judiciary. But this was as events later on showed merely on paper.

POWERS OF THE CROWN :

The Interim Act of 1951 vested the executive power of the state in the King of Nepal. But the executive power of the state, vested in the King, was to be exercised by him in accordance with the advice of his ministers either directly or through officers,[24] subordinate to him. The Constitution stated that things proposed to be done by the King, will be understood to be done by the King on the advice of his minister or ministers concerned.[25] The King was the Supreme Commander of the Army. He was to exercise these powers according to the law.[26]

24. Act. 21 (1) Exp. (2).
25. Art. 21 Exp. (1).
26. In actual practice, when the King of Nepal, declared the establishment of a democratic set up in Nepal, according to the tradition, usages and practices, all the reigns of administration which had been handed over to the Rana Prime Minister from 1903 Sambat (1846 A.D.) were taken over by the
(continued on next page)

The Constitution further provides that there shall be a Council of Ministers with the Prime Minister as the Head of the Government to assist and advice the King in the discharge of his duty.[27] The question whether any, and if so what, advice was tendered by ministers to the King could not be inquired into any court. The Councilof Ministers was collectively responsible to the King[29] i.e., the ministers could hold the office during the pleasure of the King.[30] Orders passed and instruments used in the name of the King should be authenticated and they thus may be specified in rules to be made by the King. The King of Nepal enjoyed full authority to make rules and to give instruction for the convinient transaction of the business of the Government and for the allocation of that business among the Ministers.[31] In financial matters, the Constitution provides that the King shall, in respect of every financial year, prepare a statement of the estimated receipts and expenditure of the government for the year concerned. This statement shall be known as the Financial Statement (Budget) and shall become final when approved by the King and his Council of Ministers.[32]

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King again in 2007 (1951 A.D.).

But, in fact, two episodes, Vir Gorkha Dal's Revolt of April 12, 1951 and Rakshya Dal's Revolt known as K.I. Singh's Revolt of January 21, 1952, strengthened the legal foundation of the Royal powers in Nepal. The first episode favoured the King to take over direct command of the army and to assume the title of the Supreme Command of the army. K.I. Singh's episode resulted in the disbandment of the Rakshya Dal (Liberation Army) and the remaining units of the Dal were incorporated into either the state army or the civil police. Thus both the episodes further strengthened the position of the King.

27. Art. 23(1).
28. Art. 23(2).
29. Art. 24.
30. Art. 25(1-2).
31. Art. 25(3).
32. Art. 27 and 28.

In the legislative sphere, this Act is silent about the composition, powers and functions of the legislature, but the Act states that the King, at any time, and on the advice of his Council of Ministers, may promulgate or withdraw any such ordinances as the circumstances may require.[33] Such ordinances shall have the force and effect as the law of the land but they shall cease to operate within three months of the summoning of the Assembly.[34]

In judicial field, the Chief Justice and other Judges of the Pradhan Nyayalaya (High Court) shall be appointed by the King on the advice of his Council of Ministers.[35] The King has the power to grant pardon, reprieves or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence in all cases where the punishment or sentence is by a court martial in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of Nepal extends and in all cases of punishment by death.[36]

Excepting these powers, the King, on the advice of his Council of Ministers, appoints the Badahakims for the Districts of Nepal, Ambassadors and other diplomatic representatives, the Comptroller General and the Auditor General of Nepal, the Chairman of the Public Service Commission and its other members, the Chief Election Commissioner and other members and members of other Commissions.

33. Art. 29 (1) and 2(b).
34. Art. 29 (2)(a).
35. Art. 30 (2).
36. Art. 22 (a-c).

Powers and Positions occupied by the Crown after 1951 A.D.

The main aim and object of the Revolution of 1950-51 was to establish a democratic government under Constitutional monarchy. The Interim Government of Nepal Act 1951 A.D. embodied these aims and objectives. But the most remarkable point in the interim period was the acquisition of wide powers by the Crown as a result of the lack of unity of purpose among the political parties. However, the Interim Government of Nepal Act was intended to limit the exercise of his powers by the King. It had been clearly stated in the Act that whenever anything is proposed to be done by the King, it should be understood, to be done by the King on the advice of his ministers. Again, the legislative powers of the King had been partly restricted by the clause which stated that ordinances passed by him would cease to be operative three months after the coming into session of a legislative assembly.[37] The Pradhan Nyayalaya (High Court) shall be a court having the powers to punish for its contempt. These articles had restricted the Crown's powers. This was, indeed, the most substantial check on the executive which, as events would show, came into conflict with the King's policy of extending his prerogatives in later stages.

But it is obvious that the Interim Government Act had some defects in it. The defects were perhaps partly due to the fact that it was framed in a hurry (between 18 February to 30 March, 1951 A.D.). Though the personal rule of a Rana Prime Minister ended, the King was not vested with absolute powers and was

37. Art. 31 (a).

certainly not intended to act in an arbitrary manner. The Constitution had stated, as already said that 'whenever anything is proposed to be done by the King, it will be understood that it will be done by the King on the advice of his Council of Ministers concerned.' Hence the King possessed no discretionary powers. All the powers, barring a few, were to be exercised by the King on the advice of his ministers. As in England, the Act adopted the theory of King-in-Council. Secondly, the Act is silent on the question of the appointment and dismissal of the ministers. Yet Article 24 makes it clear that this power was with the King. Thirdly, the King also possessed no emergency power which is usually given to the Head of the State in other countries. Fourthly, this Act is silent regarding the King's power of suspending the provisions of the Act. Fifthly, this Act is silent about the process of amendment. Lastly, about the residuary powers the Act was not clear. No provision was made in the Act for vesting the residuary powers in any person or a body of people. Though, in practice, the King made laws, the Act was silent in this matter too.

After the collapse of the Nepali Congress Government on 25 Sravan, 2009 V.S. (August 10, 1952 A.D.) King Tribhuban announced 'his intention to administer the country himself with the assistance of Paramarsadatri Sarkar (The Advisory Council), until a 'harmonious, stable and effective' Cabinet was formed.[38] The Advisory Council[39] headed by General Keshar Shamsher, and with

38. Gorkhapatra, Sravan 30, 2009 V.S. (August 15, 1952 A.D.); Chauhan, op. cit., p. 62; Gupta, op. cit., p. 76; Joshi and Rose, op. cit., p. 103; Devakota, op. cit., p. 193.
39. Powers and functions of Advisory Council, Nepal Gazette, Vol. 12, No. 3.

four other members was formed on 30th Bhadra, 2009 V.S. (August 1952). Then King Tribhuvan enacted a 'Special Emergency Power Act' on Bhadra 1, 2009 V.S. (August 17, 1952 A.D.),[40] according to which, the Advisory Council was to operate till a ministry with the confidence and cooperation of the people was formed. Secondly, it suspended Part III - Chapter I and II of the Interim Government of Nepal Act, which dealt with the executive, financial and legislative powers of the King and the Council of Ministers. Thirdly, the King was empowered to appoint some advisers to assist him in administration. The functions and duties of the advisers were to be settled from time to time by the King's order. Fourthly, instead of the 'advice of the Council of Ministers' the King could do everything at his own discretion. Fifthly, the King was also empowered to enact laws and ordinances any time he deemed fit under the circumstances, provided these ceased to operate after the ending of this act, or, could be withdrawn by the King at any time. Sixthly, for the proper enforcement of the act the King could frame necessary rules and regulations. Finally, it abrogated all the provisions of the Interim Government of Nepal Act and other laws which went against its spirit. The amended Act changed the role of the monarchy. This shows a change of attitude on the part of the King. Many political parties protested against this trend, but they could do nothing against this act. The Nepali Congress passed a resolution condemning the Advisory Council regime as a form of 'Revivalism' which was 'making efforts to re-introduce the old feudal system by curtailing the democratic

40. Main features of the Bisesa Paristhiti Adhikar Ain 2009 V.S. (Special Circumstances Power Act 1952). Lal-Mohar; 1/5/2009: V.S.; Nepal Gazette, Vol. 2, No. 5, Bhadra 24, 2009 V.S. (September 9, 1953).

rights of the people.[41]

<u>The Nepal Sarkar Rajkiya Parishad Ain 2010 V.S.</u>

The Council of State Act 1953 A.D. was promulgated in September which, in the absence of the King, empowered the Council of Ministers to carry on his day to day work. According to this Act, there was to be a Regency Council consisting of the following members during the absence of His Majesty the King from the Kingdom of Nepal : (i) Her Majesty the First Queen, Kanti Rajyalaxmi Devi Shah; (ii) Her Majesty the Second Queen, Iswari Rajyalaxmi Devi Shah; and (iii) His Royal Highness Crown Prince Mahendra Bir Bikram Shah Deva. In the abseence of His Magesty the King, the Lal-Mohar shall be in the control of Her Majesty, the First Queen of Nepal.[42] According to this Act, 'all residuary powers would continue to vest in the King during his absence'. The Council of state could not go against the decision of the Council of Ministers, nor could it dissolve the Council of Ministers. No change into its personnel could be made without the concurrence of the Prime Minister.[43]

According to the Council of State Act 1953 the first and the Second Queen were members of the Regency Council. Therefore, the problem arose that when the King accompanied by both the Queens went abroad for medical treatment what should be the

41. Nepal Pukar, (A Journal of Nepali Congress, Kathmandu), March 14, 1953.
The Nepali Congress Working Committee meeting was held at the Central Office, Kathmandu on March 10-13, 1953 and had passed the resolution condemning the Advisory Council - Gupta, op. cit., p. 78.
42. Nepal Sarkar Rajkiya Parishad Ain 2010 V.S. Nepal Gazette, Vol. 3, No. 8. 12 Aswin, 2010 V.S. Art. 6(I)(a-c) of the Act.
43. Ibid., Art. 6(2)(a-b) of the Act.

composition of this Council.[44] Therefore, some amendments were made in Art. 6(1)(a-c) of Nepal Sarkar Rajkya Parishad Ain 2010 V.S. According to this amendment, 'the Council which was formed under the Chairmanship of Her Majesty, the First Queen, was now formed under the Chairmanship of His Royal Highness Crown Prince Mahendra Bir Bikram Shah Deva with His Royal Highness Prince Himalaya Bir Bikram Shah Deva and His Royal Highness Prince Basundhara Bir Bikram Shah Deva as its members. The Lal-Mohar Seal was accordingly placed in the control of His Royal Highness the Crown Prince of Nepal. According to these changes, the Council has to work partly as an intermediary between the King and the Council of Ministers in regard to the appointment or dismissal of government servants and report its actions to the King and enforce any proclamation issued by him from outside the country. But this body had no right to dismiss the Council of Ministers.[45]

44. Nepal Sarkar Rajkiya Parishad Dosro Samsodhan Ain 2011 V.S. Nepal Gazette, Vol. 4, No. 9, 2011/6/8.

45. Crown Prince Mahendra Bir Bickram Shah Deva left for Europe to meet his father King Tribhuban who was undergoing medical treatment in Zurich, Switzerland. He discussed with his father about the position of the Chairman of the Regency Council and the political crisis which was developing in the country. In fact, this body had no right to accept the resignation submitted by the Prime Minister M.P. Koirala because the Act had stated that this body had no right to accept the resignation tendered by the Prime Minister and other members of the Council of Ministers nor had it the power to dismiss the Council of Ministers headed by the Prime Minister. The hostile atmosphere in the M.P. Koirala's Cabinet, the defeat of the government in the Advisory Assembly many times, lack of sympathy from the Regency Council and the deteriorating condition of the administration, compelled M.P. Koirala ultimately to tender the resignation of his government on January 11, 1955 and advise the Chairman of the Regency Council to oust T.P. Acharya and B.K. Misra from the membership of the Council of Ministers. But the Chairman of the Regency Council could not go against the Act. After his return from Europe on February, 1955, Crown Prince, Mahendra Bir Bickram Shah Deva broadcast King Tribhuban's Message which read: "We have duly vested him (Crown Prince) for the time being with all our royal authority so that he could

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According to the Interim Government of Nepal Act (1951 A.D.) the King's decision and actions were above the law. The Act defined that the King was both the initiator and final authority in the legislative field.[46] But in November 1953 A.D., when Pradhan Nyayalaya (High Court) declared the orders of the government ultra vires, the king amended the Pradhan Nyayalaya Ain (High Court Act)[47] and deprived it of its powers granted by the Interim Government of Nepal Act. Thus the judiciary was stripped of its independence and was made subservient to the executive.[48] About the powers and position of the King a Proclamation was issued on Magh 7, 2010 V.S. (January 20, 1954 A.D.).[49] This Act

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fully exercise such authority for the execution of necessary work in order to achieve the welfare of the state and its people, keeping in view the present situation of the country and as far as possible the voice of the people." The Rajakiya Parishad was thereafter dissolved. T.P. Acharya and B.K. Misra were ousted from the membership of the Council of Ministers on February 11, 1955 and the Crown Prince began to rule with full royal authority. He condemned the government and declared to make improvements in the administration of the government. Later on, on March 2, 1955 he dissolved the Council of Ministers headed by M.P. Koirala. - Proclamations, Speeches and Messages : H.M. King Mehendra Vol. I (Kathmandu, 1967), pp. 31-33; Devakota, Op. cit., pp. 277-78.

46. Art. 30.
47. Nepal Pradhan Nyayalaya Ain (Second Amendment Act) 2010 V.S. Nepal Gazette, Vol. 4, Falgun 3, 2011 V.S. for detail, See: f.n. 107 of this Chapter.
48. Chauhan, op. cit., p. 67.
49. Nepal Gazette, Vol. 3, No. 26, Magh 25, 2011 V.S. : See, Appendix 11. "Royal Prerogatives Reaffirmed" (Editorial), The Times of India, New Delhi, February 13, 1954.

helped him to transform himself, within less than four years, from a mere titular head into the most powerful political force in the Country.

The proclamation stated :

> "It has been the established tradition and practice in our country since the time of my August forefathers that by virtue of the inherent sovereignty and the Royal prerogratives, the supreme executive, judicial and legislative authority vests in the Sovereign. For some time this authority was, in accordance with the delegation made by some of Our distinguished predecessors, exercised by their Prime Ministers. This delegation was, by virtue of Our Proclamation of 7th Falgun, 2007, revoked where by the supreme authority in all the sphere vests solely in <u>Us.</u>"[50]

This was the most important Royal announcement which clarified the real powers of the Crown after the restoration of King's powers. Now it became clear that the King was the real source of all powers executive, legislative and judicial, and at the same time the head of the state.

As we have already seen, the executive authority by the Interim Act of 1951 had been vested in the King and his Council of Ministers. But the Act had also stated : "Whenever anything is proposed to be done by the King it will be understood that it will be done by the King on the advice of his ministers or minister concerned.[51]

But after the judgement of the Pradhan Nyayalaya on the appeal filed by B.P. Koirala and others against the internment

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50. The term 'US' refers to the King and his immediate family, consisting of his Queen and the Crown Prince. Traditionally, the Shah Kings have used this plural form to identify themselves in their proclamations.- Joshi and Rose, op. cit., p. 285. See, Appendix 11.
51. Art. 21. Exp. (1).

order passed on them, the King decided to restrict the rights of the judiciary. King Tribhuwan proclaimed a major amendment in the Interim Government of Nepal Act 2007 V.S. (1951) on 20th January, 1954 (7 Magh, 2010 V.S.). This amendment, called the Third Amendment, also clarified the position of the King in relation to the Council of Ministers. According to this, instead of 'the King and his Council of Ministers', His Majesty the King was vested with the executive authority of the state. It was to be exercised by him or through the ministers or through other officers subordinate to him. It was also stated that this provision would not affect the validity and operation of any law conferring powers and functions upon the authorities subordinate to the King. The Amendment Act also clarified the position as regards the appointment, dismissal and position of the Council of Ministers. It was stated that the Prime Minister was to be appointed by the King and other ministers were also to be appointed by him on the advice of the Prime Minister. But this should not mean that the King was bound by this advice. The Ministers were to hold office during the pleasure of the King and they were to be collectively responsible to the King.

According to the Interim Government of Nepal Act 1951 A.D. the legislative powers of the King were 'to promulgate such ordinances as the circumstances appear to require on the advice of his Council of Minister ...'[52] No provision for a separate legislature had been made in the Act. According to this Act, the King had the ordinance making power.[53] The Pradhan Nyayalaya

52. Art. 29 (1).
53. Art. 29.

(High Court) challenged the power of the King to enact legislation as the Principal Act did not mention this power and according to the Act, 'the King could promulgate only the ordinances. The Court decided that the laws which were repuguant to the fundamental rights guaranteed by the Principal Act, were invalid'. To end this constitutional crisis, the Third Amendment Act gave full power of law-making to the King. Article 30 of this amendment Act says : 'For the avoidance of doubt it is hereby declared and affirmed that, not withstanding anything contained in any Nepal law or in any judgement of any court, the King has and continues to have soveggn-and sovereign and plenary powers to make laws for peace, order and good government of Nepal. In enacting laws for peace, order and good government for the country, the King might act on the advice of the Council of Ministers and it was to be lawful for the Council of Ministers to submit a bill for the consideration of the King. Regarding the bills submitted to him for assent, the King was empowered (a) to give his assent to the Bill, (b) to withhold his assent, (c) to send it back to the Council of Ministers with a message to reconsider it or some of its provisions, (d) to recommend such amendments as the King might deem fit. In case of (c) and (d) the Council of Ministers was duly bound to reconsider the bill or some of its provisions and submit it again to the King. The Act was, however, silent on the King's power regarding a bill submitted to him for the second time. The bill was to become a law after it got the assent of the King. The laws were subject to the powers and functions of the Advisory Assembly (which was not yet formed). But if the Advisory Assembly were

not in session and if the Council of Ministers considered it necessary to enact the law immediately in the public interest, the latter was to submit the bill to the King for his consideration without being considered or approved by the Advisory Assembly.[54]

According to the Interim Government of Nepal Act, the Pradhan Nyayalaya (High Court) of Nepal was the highest tribunal of the country. The Pradhan Nyayalaya Ain of 2008 V.S. (Second Amendment) conferred further rights on it.[55] It was the final tribunal with the right to hear appeals, issue writs of Habeas Corpus, Mandamus, Quo-Warranto notices and other prohibitory orders.[56] The Pradhan Nyayalaya (High Court) of Nepal was the court of record and was given the power to punish for contempt of itself.[57] But after the judgement of the court referred to above on November 10, 1953. King Tribhuvan proclaimed major amendment in the Interim Act 2007 to end the constitutional deadlock between the executive and the Judiciary.[58] As the main intention of this amendment was to downgrade the status of the Pradhan Nyayalgya (High Court), all the provisions relating to the Pradhan Nyayalaya (High Court) were repealed and instead it was written, "There shall be a Pradhan Nyayalaya (High Court)

54. H.M. King Tribhuvan's Royal Proclamation, January 20, 1954 A.D. (Magh 10, 2010 V.S.). See, Appendix 11.
55. Nepal Gazette, Vol. 2, No. 18, Lal Mohar: 2009/1/26 : Pradhan Nyayalaya Ain (Third Amendment), Nepal Gazette, Vol. 2, No. 18, Lal-Mohar: 2009/6/31.
56. Pradhan Nyayalaya Ain (Second Amendment), Art. 30.
57. Art. 31.
58. See : f.n. 49 and f.n. 109 : Appendix 11.

and the powers and functions of the Pradhan Nyayalaya (High Court) shall be determined by law". By another Proclamation, the powers and functions of the Pradhan Nyayalaya (High Court) were greatly reduced. It was no longer a court of record. It lost its power to punish for contempt of itself. It was also deprived of its powers of issuing writs of Habeas Corpus, Mandamus, Quo-Warranto notices and other prohibitory orders. But later on during the reign of King Mahendra, the Pradhan Nyayalaya (High Court) was again made Sarbochha Adalat (Supreme Court) of Nepal.[59] The Court was given the right to issue writs like Habeas Corpus, Mandamus, Quo Warranto etc., except to abrogate or limit or disregard the powers of the Crown.[60]

By the various Proclamations, announcements and amendments in the Interim Government of Nepal Act 2007 V.S. (1951 A.D.), the King of Nepal became the real source of all executive, legislative and judicial powers in the state. He became the supreme authority without any check on his powers. Thus were laid 'the foundation of the absolute rule of the Crown in Nepal'. In fact, the King himself it become clear was not interested in being merely the constitutional head of the state, and political atmosphere of Nepal on account of mutual jealousy and rivalry between the different political parties, gave him the opportunity to became the real sovereign of the state.

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59. Nepal Gazette, Vol. 6, Sp. Issue 4. Lal Mohar ; 8/2/2013.
60. Sarbochha Adalat Ain 2013, Art. 11.

The National Council :

After the formation of a new Council of Ministers under Dr. K.I. Singh, King Mahendra announced the formation of a National Council (Rastriya Parishad), a six-men expediting Committee on July 26, 1957.[61]

Defining the functions of the National Council, the Government passed the National Council Act. According to this Act, the functions of the National Council were to advise the King in matters concerning peace, prosperity, security, and administration of the country. The Council could have a maximum number of six members, each for a term of five years in addition to the Prime Minister and the Chief Justice of the Supreme Court, who were ex-officio members. The National Council would advise the King on matters placed before it by him, or, could on its own initiative submit suggestions and proposals to the King regarding matters conducive to national welfare. The Council was to frame rules for its functions requiring the approval of the King. The members were to hold office at the pleasure of the King, and the Council could even be dissolved if the King so decided. The salaries allowances, and other privileges of the members of the National Council were to be determined by the King.[62]

61. The National Council was formed under the Chairmanship of Prince Basundhara Bir Bikram Shah Deva with other five members. The Prime Minister and the Chief Justice of the Supreme Court were to be ex-officio members. The nominated members were General Arjun Shamsher JBR, Gaya Prasad Shah and Khadga Narshing Rana. Hlakhabar (Kathmandu), September 9, 1957.

62. Gorkhapatara, December 4, 1957.

Commenting on the formation of the National Council, the "Commoner", a Kathmandu Daily remarked:

> "The quick start of the National Council has only added to the feelings of suspense among the people. It was clear to all that the new development could not in any way help in lessening the difficulties of the present political situation for the reason that a National Council was no substitute for a popular ministry. The position remained unchanged because, irrespective of existence of the National Council, the direct rule of the King continued."[63]

The "Ujyalo", another daily paper had reported about the possibilities of its being entrusted with the responsibilities of administration if no satisfactory settlement could be effected with political parties.[64]

The Kathmandu Units of the Democratic Front, commenting on the formation of the National Council had said that not to define its function was 'Unconstitutional'.[65]

The "Janamat" expressed the view that if the National Council had mandatory power over the Cabinet, it would fulfil the role of the legislature in the Interim period. If it was to function only in its advisory capacity, it would have a great deal of authority over the Cabinet. The paper deplored the formation of the Council without popular basis and held that there must be some motive behind the fact that "three seats were yet to be filled."[66]

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63. The Commoner, December 3, 1957.
64. The Ujyalo, December 4, 1957.
65. The Commoner, December 1, 1957.
66. Janamat, September 10, 1957.
    See also : Nepal Press Digest, Issue No. XVI.

The Council met only once under the Chairmanship of Prince Basundhara before he left for India, on December 3, 1957. Meanwhile the meeting decided that in the absence of the Prince, the members of the Council would preside over the meetings rotation-wise every week. But after the dismissal of Dr. Singh's Cabinet, the Council was virtually defunct.

Position and Power of the Prime Minister of Nepal 1951-59 :

The Interim Act had provided for a Council of Ministers with the Prime Minister at its head to aid and advice the King in the exercise of his functions.[67] Other Ministers were to be appointed by the head of the state but in actual practice they were the nominees of the Prime Minister. The Act had clearly defined the duty of the Prime Minister of Nepal and there was no substantial change in the powers and functions of the Prime Minister.[68] According to this the Prime Minister was to communicate to the King all decisions relating to the administration of the affairs of the country.[69] He was to furnish such information relating to the administration as the King may call for.[70] He was bound, if the King so desired to submit for consideration of the Council of Ministers any matter on which a decision had been taken by a Minister but which had not been considered by the Council.[71]

67. Art. 23(1).
68. See Lal-Mohar granted by the King to the Prime Minister of Nepal after 1951. Appendix 3.
69. Art. 26(a).
70. Art. 26(b).
71. Art. 26(c).

In the beginning, the Council of Ministers (headed by the Prime Minister) was very powerful. But with the promulgation of the Bisesha Paristhiti Adhikar Sambandhi Ain 2009 V.S. (Special Circumstances Power Act 1952 A.D.)[72] the position changed - the Crown became all powerful and the Council of Ministers (headed by the Prime Minister) became merely a shadow. The right of the King to appoint his Prime Minister was asserted because the Prime Minister and his members of the Council of Ministers were not responsible to the legislature but to the King.

Though the Act had said that 'there shall be the Prime Minister', but in the eight years history of the interim period, six amendments were made. Among them the most important were : (i) Special Emergency Powers Act 2009 V.S., which suspended entire provisions under Chapter 3, Section 1 and 2 of the Principal Act relating to the executive powers of the monarch and the Council of Ministers.[73] (ii) the Third Amendment of the Interim Government of Nepal Act 1951 A.D., which granted wide powers to the Crown and curtailed the powers of other organs of the government. From 1952 A.D. (2009 V.S.) onwards the King began to rule either directly or appointed Royal advisors to conduct the business aided as the Advisory Committee, or as a council of Ministers headed by the Prime Minister of a political party.

72. Nepal Gazette, Vol. 2, No. 5, Lal Mohar 1/5/2009 V.S.
73. Paramarsadatriko Kam ra Kartabya Ain, Nepal Gazette, Vol. 2, No. 3, Ordinance : 2009/4/31.
To circumvent the legal difficulty over the appointment of General Keshar Shamsher, King Tribhuwan promulgated a Special Circumstances Power Act on September 9, 1952, effective retroactively, which suspended all the clauses of the Interim Government Act referring to the Council of Ministers.

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72. Nepal Gazette, Vol. 2, No. 5, Lal Mohar 1/5/2009 V.S.
73. Paramarsadatriko Kam ra Kartabya Ain, Nepal Gazette, Vol. 2, No. 3, Ordinance : 2009/4/31.
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In fact, in the Interim period, the Prime Minister and other Ministers of the Crown were powerful in the beginning. But as a result of these developments, the position and powers of the Prime Minister no longer remained politically powerful.[74]

Position and role of the Advisory Assembly :

The Interim Government of Nepal Act 1951 A.D. was silent about the formation of the highest legislature of the country. But the Act defining the legislative powers of the King said that if at any time the King, on the advice of his Council of Ministers, was satisfied that circumstances existed, which rendered it necessary for him to take action, he could promulgate ordinances but these shall cease to operate at the expiry of three months from the assembly of a validly constituted legislative body.[75] The main cause for the exclusion of the organisation and functions of the legislature lay in the fact that in 1952 elections to the Constituent Assembly were to be held and this Assembly was to prepare the Constitution for Nepal. But there was no possibility that elections could be held within this time, and there was speculation that such elections were likely to be delayed for several years. But for the smooth working of a government,

74. Various amendments of the Interim Constitution had not only provided the legal foundation of the Royal regime but also marked the absolute authority of the King in political affairs. But, King Tribhuvan's physical unableness forced him to delegate sweeping powers to the Prime Minister, M.P. Koirala. So, in the interim period Mr. Koirala became the most powerful Prime Minister though there was no substantial change in the powers and functions of the Prime Minister.
75. Art. 29(i) and (ii).

some kind of a legislature was necessary. Such legislature could function as an Advisory Body (Salahakarsabha) to the King and the government. It would serve as a training centre for the political leaders of the Country. As the King felt the necessity of a legislative body to discuss matters of the state and "to check the high handedness of the executive", an Advisory Assembly had to be created. And thus the First Advisory Assembly consisting of 35 members was nominated by King Tribhuvan on October 4, 1951 A.D. (Aswin 17, 2008 V.S.) as an interim legislative body. In his Proclamation on the nomination of thirty-five man Advisory Assembly he said :

> "Pending the framing of the Constitution by the Constituent Assembly through the elected representatives of the people, the Council of Ministers framed and nominated by Us has to run the administration according to the Interim Constitution approved by Us, and as it would take a certain period of time to make preparation for the election of the Constituent Assembly and it has been my desire to make popular representatives participate within this interim period in the administration of the country and I hereby appoint an Advisory Assembly through this Proclamation to aid and advice me and my Council of Ministers. The rules of this Assembly shall be framed very soon. The members of this Advisory Assembly have been nominated by me on the basis of geography and demography. The members of our Council of Ministers shall also be the ex-officio members of this Assembly. We command Our tenants-subjects that all extend cooperation to this Advisory Assembly nominated by Us."[76]

Prime Minister Mohan Shamsher felt that his prestige was involved as the King had acted without his advice. So he challenged the King on the ground that these names were not approved by

76. H.M. King Tribhuvan's Royal Proclamation, Aswin 17, 2007 V.S. (October 4, 1951 A.D.). See, Devakota, op. cit., pp. 104-105.
The Advisory Assembly had 35 members among whom only 3 or 4 could be called independent members, the rest were all drawn from the Nepali Congress.
See, Appendix 9 (I).

the Council of Ministers. Article 21 of the Interim Act, Explanation (1) clearly says that, "Whenever anything is proposed to be done by the King it will be understood that it will be done by the King on the advise of his Minister or Ministers concerned." Again he claimed that," such consultation is necessary and compulsory for the smooth working of democracy."[77] Many political parties except the Nepali Congress also criticized the King's action as 'against the Interim Government of Nepal Act 1951.'

Thus the formation of the Assembly did not meet with the approval of the Prime Minister Mohan Shamsher as well as of the political parties in Nepal except the Nepali Congress. Before a meeting of this new body could take place, there occurred the uprising of the Rakshal Dal in January 1952. Although this was supressed yet the King felt necessity of broadening the base of his government and of giving it a more representative character. Therefore, he reconstituted the Advisory Assembly by adding 21 more members to it by a Proclamation (April 13, 1952). The Proclamation stated :

> "On the 17th Aswin, 2008, a 35 member Advisory Assembly of non-official members and Ministers was made by Us through a proclamation and among those non-officials members some have since then been nominated as Ministers and some others on some government jobs and these persons are no longer non-official members of the Assembly ... The 35 non-official members of this Assembly were selected from various parts of the country yet we believe there are important elements in the country which should find representation in the Assembly. Regarding the question of representation, the real voice and predilections of the people can be known through a duly conducted election only. But such an election is not possible in the country at the present time and, to make the Advisory Assembly as much repre-

77. Statement issued by Maharaja Mohan Shamsher, Prime Minister of Nepal. Devakota, op. cit., pp. 105-106.

> sentative as possible from the practical view point and to make people have faith in and reliance on the activities of such an Assembly we nominate the following ..."78

Two months after this Proclamation the King promulgated a Law (Ain) known as the Interim Government of Nepal Act (Second Amendment, 2009 V.S.) 1952. It dealt with the composition, powers and functions of the Advisory Assembly.

This Act laid down that the number of members of the Assembly would be fixed by the King, who would select them from among the fully qualified citizens of Nepal. They would include the representatives of various areas, classes and interests of the society. The Ministers, State Ministers and Deputy Ministers were to be ex-officio members of the Assembly.[79] It would meet at least twice a year and not more than six months would elapse between its two sessions.

No one could be a member of the Assembly unless he was a citizen of Nepal and not less than 25 years of age. No one could be a member of this Assembly who was in the service of the government, or insolvent or of unsound mind. The seat of a member could be vacant on his death, or on resignation or he became dis-

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78. H.M. King Tribhuban's Royal Proclamation on the reconstitution of the Advisory Assembly, Gorkhapatra, Vol. 55, No. 1, pp. 1 and 3; Nepal Gazette, Vol. 2, No. 1, 2009/3/7: Devakota, op. cit., pp. 159-60. See Appendix 9(II).
79. The Interim Government of Nepal Act (Second Amendment 2009 V.S) Advisory Assembly Act 2009 V.S., Nepal Gazette, Vol. 2; Dhundhiraj Sharma, (Member Law-Commission)- Parliament ra Salhakar Sabha, Sahitya Bivaga, Nepal Academy, (Kathmandu, 2016, pp. 224-301.
80. Art. 33-40.

qualified or absented himself for a continuous period of three months. Vacancies were to be filled by King's nominees for their remaining period.[81]

The privileges of the members of the legislature in the Interim Government of Nepal Act 1951 A.D., as also earlier in the Government of Nepal Constitution Act 1948 A.D., were generally similar to those in the Government of India Act [redacted] 1935 and the new Constitution of India. The privileges of the members of the legislatures in India are the same as those of the members of the House of Commons in Britain. The members of the Advisory Assembly enjoyed the following privileges:

Protection was granted to, Advisory Assembly from the Law Courts, which could not inquire into its proceedings. All members of the Advisory Assembly were protected from courts for their speech of voting inside the House. All members and officiers of Advisory Assembly, empowered to conduct the business of the House, were protected from law courts in exercise of their powers. No publication made under the authority of the Advisory Assembly could be a subject of proceedings in any court. Other privileges of the House and its members were to be prescribed by law.[82] The special privileges of the Advisory Assembly and its members and the protection given to its members were deemed essential to allow its freedom of deliberation.

According to this Act, 'there shall be an Advisory Assembly to aid and advice the King and his Council of Ministers on the day to day administrative affairs of the state.[83] The Assembly

81. Art. 28 (h).
82. Art. 25(t) (1-2).
83. Art. 33.

was to hold its sessions at least twice a year provided that not more than six months would intervene between its last sitting and the next session.[84] The King was to summon, prorogue and dissolve the House.[85] The House was to elect the Speaker and Deputy Speaker from among the members of the House to conduct the business of the House.[86] At the commencement of every session of the Advisory Assembly, the King was to address it and inform it about the purpose of its being summoned. He could address the Advisory Assembly at any other time as well, and for that purpose attendance of its members was required. His Majesty could also send messages to the Advisory Assembly, whether in regard to a matter pending before the Assembly or otherwise. The Advisory Assembly was by all convenient despatch to consider any matter required by the message to be taken into consideration.[87]

The Advisory Assembly could discuss matters connected with legislative and executive functions of the Government.[88] Again the Assembly had the right to discuss any matter except those relating to the friendly relations of the government with other governments, the personal conduct of the King and other members of the royal family, matters which could not be disclosed in public interest viz., relating to movement and posting of troops and it could not pass a vote of censure against any minister of

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84. Art. 47(1).
85. Art. 48(2).
86. Art. 41.
87. Art. 48 and 49.
88. Art. 53.

the Crown.[89] The Assembly could pass a resolution against the [illegible] ministry, but it would not lead to resignation. Members of the Assembly tabled a resolution of no confidence against Prime Minister, M.P. Koirala, and his Council of Ministers on the issue of the revaluation of the Indian Currency on August 5, 1954 A.D. The motion was passed. But according to this act it was not required of the ministry to resign. But to preserve the democratic usage M.P. Koirala, tendered his resignation on the ground of morality, and that was accepted some time later.

It was also provided that no bill nor any measure could be introduced before the King for his assent until it had been approved by the Assembly.[90] The act also repealed Art. 28 of the original Act, and instead provided that the annual financial statement prepared by the King was to be laid before the Advisory Assembly, which was to have the power to discuss and vote it. But it was not allowed to discuss anything concerning King's Privy Purse.

The powers of the Advisory Assembly remained restricted. The King's right to pass all laws and ordinance were left un-

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89. Sharma, op. cit., pp. 60-61; Appendix 12(8): 250-52; S.D. Muni, "Legislature and Foreign Policy in South Asia : The Case of Nepal" (Art.), South Asian Studies (Rajasthan University, Jaipur) Vol. 6, No. 1, January, 1971, f.n. 11, p. 26.
About the discussion and restriction of friendly relation with foreign powers was 'an effective, vague, and wide control' of the Advisory Assembly - Rastrahit, Weekly, Kathmandu, August 1952, Bhadra 1, 2009, Yr. 1, No. 2.
90. Art. 51 (4).

touched. During the interim period, only three Assemblies met. King Tribhuvan had said that 'the Assembly was to educate the country and its political elite in parliamentary process.[91] In the history of Advisory Assembly, two important events appear to be of political interest. The first was the censure motion moved by the members of the Assembly against M.P. Koirala's government and the other was a demand raised in the Advisory Assembly that the Draft Constitution (1959) should be placed before it for discussion and approval. However, this demand was not accepted.

In the interim period, three Advisory Assemblies in all were summoned. First, inaugurating the Advisory Assembly on July 4, 1952 King Tribhuvan had said :

> "This day will occupy an important place in the nation's history ... . It is my firm wish to take the country on the path of progress, based on the principles of parliamentary democracy and strengthened by efforts, goodwill and cooperation of all."

The second session of the First Advisory Assembly was scheduled to commence on August 16, but the democratic experiment suffered a serious setback on August 14, 1952, when the first and last homogenous Council of Ministers of the Nepali Congress collapsed on the ideological dispute between the two Koirala brothers, Prime Minister M.P. Koirala and B.P. Koirala. Three weeks later after the formation of the Council of Advisers, the First Advisory Assembly was formally dissolved on the ground of Second Amendment of the Interim Government of Nepal Act 2007 by the promulgation of a Special Circumstances Power Act on September 9, 1952.

91. Devakota, op. cit., p. 160.
In the Interim period, three Assemblies in all were summoned. First Advisory Assembly was summoned on Asar 24, 2009 (July 1952); Second Assembly was summoned on Jestha 25, 2011 (8 June, 1954) and the Third Assembly was summoned on Marga 10, 2014 (26th November, 1958).

Later on, after the formation of National Coalition Council of Ministers headed by M.P. Koirala on February 18, 1954, Second Advisory Assembly was formed by Royal Proclamation on April 13, 1954. This Assembly was conceived on a much wider scale than its predecessor of 1952. All political parties except the Communists were granted representation. But the Nepali Congress refused to participate on the grounds that it was under-represented.[92] Joshi and Rose have said, "Overtly critical and often hostile, the members reflected the temper of the people whom they were supposed to represent and with whom they were certainly in more direct contact than the Ministers."[93] King Tribhuvan's hope for better government and smooth working of the Advisory Assembly was nullified by the dispute between Prime Minister, M.P. Koirala and Home Minister, T.P. Acharya and the role played by the Assembly in this period. The Second Advisory Assembly was prorogued by the Chairman of the Regency Council on February 9, 1955 at the request of the Prime Minister.

Later on, in the Interim period, King Mahendra announced the formation of the Third and last Advisory Assembly on June 2, 1958 before the elections. But "the Advisory Assembly was nothing more than a tactical maneuver on the King's part."[94]

92. The size of the assembly was increased from 61 of 1952 to 113 members in 1954. Among them, the National Democratic Party was alloted 45 seats, the Praja Parishad 12, the Nepali National Congress 8, Jana Congress 1, Nepali Congress 11 and Gorkha Parishad 1. After the refusal of participation of the Nepali Congress, later on, 8 more names were added to the list from Praja Parishad and Jana Congress.
93. Joshi and Rose, op. cit., p. 118.
94. Ibid., p. 213.

How far, this institution fulfilled its aims? It can not do better than quote the judgement of L.S. Baral, a distinguished Nepalese Scholar:

> "In actual experience, however, all such Advisory Assemblies (there were three in all) did more harm than good ... . In the case of the first two Advisory Assemblies the majority of the party then in government was maintained, but the third and last, set up in 1958 by King Mahendra, even when general elections were due to take place after only a few months, did not have any party majority as the criterion, and the selection of its members was apparently based not on political affiliation but on personal loyalty to the King. In each case the opportunity to participate in the rule making processes had been provided to Assembly members. In their over-enthusiasm for exercise of greater power they merely transformed the Assemblies into arenas of disruptive activities, and in so doing they jeoparadized the tenure of the government than in power. Inevitably, each time when the first two Assemblies were functioning, the Prime Minister of the day had to neglect his nation-building programme in order to prevent his government from collapsing. A great majority of the members of the last Assembly had endeavoured to get the scheduled general election suspended for an indefinite period. Thus all the three Assemblies did no more than perpetuate a chronic political instability."[95]

Place of Judiciary in the Interim Period :

The Interim Government of Nepal Act 1951 A.D. had established the Pradhan Nyayalaya (High Court) as the highest tribunal of the country.[96] It consisted of a Chief Justice and other Judges as the King, on the advice of his Council of Ministers, may appoint.[97] A Judge of the Pradhan Nyayalaya was to hold office till he attained the age of sixty-five.[98] Under this Act only a citizen of Nepal who had held a judicial office for at least 10 years in Nepal, or had for at least 10 years been an advocate of the Pradhan Nyayalaya could be appointed the Chief Justice or a Judge.[99] The Chief Justice or a Judge of this Court was not to

95. Baral, op. cit., p. 187.
96. Art. 30(1)
97. Art. 30(2).

be removed from his office except by an order of the King passed on the advice of a two-thirds majority of his Council of Ministers on the ground of proved misbehaviour or incapacity.[100] The King, with the consent of his Council of Ministers, was to determine the salary of the Chief Justice and other judges of the Pradhan Nyayalaya.[101]

On May 8, 1952 (25 Baishaka, 2009 V.S.), the King made a minor amendment in the Interim Government of Nepal Act 1951 A.D. regarding the composition and powers of the Pradhan Nyayalaya.[102] This amendment made a minor change relating to the qualifications of the judges of the Pradhan Nyayalaya. This was a minor amendment but was in fact, significant. The Interim Government of Nepal (Amendment) Act 1951 states that 'Whereas it is expedient to amend the Interim Government of Nepal Act, 1951, in order to make it possible for suitable persons who are not citizens of Nepal to be appointed as Judges of the Pradhan Nyayalaya.[103]

100. Art. 30 (5).
101. Art. 30 (4).
102. Nepal Pradhan Nyayalaya ko Ain 2008 V.S. Nepal Gazette, Vol. 2, No. 18, Lal Mohar: 2009/1/26.
103. Ibid. His Majesty the King, Tribhuvan Bir Bikram Shah Deva, on the advice of his Council of Ministers is pleased to promulgate this Act. The following proviso shall be added at the end of sub-section (3) of Section 30 of the Principal Act: "Provided that, in exceptional cases when suitable citizen of Nepal are not available for appointment as the Chief Justice or Judges of the Pradhan Nyayalaya, suitable persons, who may not citizens of Nepal, shall be eligible for such appointment." - Nepal Gazette, Vol. 2, No. 18; Peaslee, Amos J. Constitutions of Nations, Vol. II, p. 749.

Thus according to it, a highly qualified person could be appointed as a Pradhan Nyayalaya Judge even if he was not a citizen of Nepal.

The Pradhan Nyayalaya was a court of record and had all the powers of such a court, including the power to punish for its contempt.[104] Art. 32 stated "shall, till altered according to law, continue to be the same as hereto before." Through a law enacted on the same date as the first amendment (May 8, 1952, i.e., 25 Baisakha 2009 V.S.), the Pradhan Nyayalaya (High Court) was once again declared the highest court of the land and its orders and decisions were deemed to be final. This court was also empowered by this act to issue directions or orders in the nature of the writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari.[105] It was also given full authority over all subordinate courts and tribunals under its jurisdiction. Again the King, on the advice of the Advisory Council, amended some of the articles of the Pradhan Nyayalaya Act on October 16, 1952 A.D. to fix the salaries and other remunerations of its Judges.[106]

After having seen the organization and composition of the Pradhan Nyayalaya (High Court) as given in the Interim Act and subsequently amended, its role and position should be dwelt upon at some length. This will show how the judiciary lost its power, by the amendment Act of 1954 and how again in 1956 A.D. (2013 A.D.) some of its original powers were restored.

104. Art. 31.
105. Art. 30 of the Pradhan Nyayalaya Ain (Second Amendment), Nepal Gazette, Vol. 2, No. 18.
106. Ibid., Lal-Mohar : 31/6/2009.

In the judicial sphere, three important amendments were made in the Pradhan Nyayalaya (High Court) 2008 V.S. Ain of Nepal.[107] Among them, the most important one was the Second Amendment (Nepal Pradhan Nyayalaya ko Ain 2009 ko Dosro Samsodhan 2010 V.S.) on January 10, 1954 A.D., by which the entire chapter dealing with the judiciary was deleted from the Interim Government of Nepal Act 1951 "excepting the provision that 'there shall be a Pradhan Nyayalaya' the Constitution, powers and functions of which would be determined by law." Later on the Pradhan Nyayalaya, which was the highest tribunal of Nepal, was replaced as the result of a new act called the Sarbochha Adalat (Supreme Court) of Nepal Ain 2013 V.S. (1956 A.D.), by a new Court called the Sarbochha Adalat.[108]

The main cause of the introduction of the Second Amendment (2010 V.S.), as already stated was the decision of the High Court in the case of B.P. Koirala, B.B. Pandey and M.B. Shahi on 9th November 1953 A.D. Mr. B.P. Koirala was restricted to

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107. In the judicial field, three important amendments were made relating to the powers and positions of the Pradhan Nyayalaya (High Court) of Nepal. The Nepal Pradhan Nyayalayako Ain 2008 (First Amendment). Baisakha 1, 2009 V.S. (Lal-Mohar: 2009/1/26), the Pradhan Nyayalayako Ain (Second Amendment) 2010 V.S. (Lal-Mohar : 3/11/2011); The Nepal Pradhan Nyayalayako Ain 2008 (Third Amendment) 2012 V.S. (Lal-Mohar: 6/8/2012). See (i) Nepal Gazette, Vol. 2 No. 18; (ii) Nepal Gazette, Vol. 3, No. 26; (iii) Nepal Gazette, Vol. 5, No. 13. Nepal Kanun Patrika, Vol. I, Chaitra 2015 V.S.

108. Proclamations, op. cit., pp. 46-47, May 21, 1956 A.D. Sarbochha Adalat Ain 2013 V.S. (Supreme Court Act 1956 A.D.) came into force by the Royal Proclamation on 2013/2/8 (May 21, 1956 A.D.) and the Nepal Pradhan Nyayalaya Ain 2008 was repealed. - Nepal Gazette, Vol. 6, No. Special Issue 4.

Kathmandu Valley on September 20, 1953 A.D. by the Deputy Secretary of the Home Ministry on charge of 'having fomented dissatisfaction among civil servants'. Regarding B.B. Pandey and M.B. Shahi, the Badahakim of West No. 1 of Nepal, had issued an order of internment against them. In both cases, the Pradhan Nyayalaya (High Court), after initial differences among the Judges, decided that internment of the plaintiffs violated Art. 10 of the Interim Government of Nepal Act 1951 A.D., which stated that 'No person shall be deprived of life and personal liberty except according to procedures established by law'. The Court laid down the following principles :

(1) The Public Safety Act and the Kathmandu Commissioner's and Majistrate's orders were ultra vires as they violated Art. 16 of the Interim Government of Nepal Act 2007 V.S. (1951 A.D.) which guaranteed the Nepali Citizens the right to reside and settle in any part of Nepal;

(2) The Laws were repuguant to the Fundamental Rights guaranteed by the Interim Government of Nepal Act 2007 V.S. (1951 A.D.);

(3) The King had no power to enact legislation as the Constitution was silent on this point. He could promulgate only Ordinances; and

(4) The Prime Minister had no power to issue executive orders, only the King-in-Council could do so.[109]

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109. Case against Deputy Secretary of the Home Ministry and Case against Badahakim of West No. 1 of the Kingdom of Nepal. See, The case of Mrigendra Shamsher Vs Kathmandu Magistrate 2008 V.S.
See: Nepal Kanun Patrika, Decision No. 23, Kanun Patrika, 2016, p. 115.
Ibid. Decision No. 24, Kanun Patrika 2016, p. 123.
See : Appendix 10.

This judgement, in the words of Anirudhra Gupta, "made the King and his Ministers aware of the challenge to which they were exposed. The King was confronted by a situation in which he could either accept the judgement as precedence for deciding all future cases pertaining to the rights of the Executive or scrap the entire Judiciary and reconstitute it in such a way as to make it completely subservient to the Executive. It was the latter course which the King chose when, by promulgating a proclamation, he amended the Pradhan Nyayalaya Act and deprived the High Court of the powers granted to it by the Constitution of 1951."[110]

The King proclaimed and amended the Pradhan Nyayalaya Act 2008 which minimized the status of the Pradhan Nyayalaya (High Court) of Nepal. The amended Act stated that "the Nepal Public Protection Law 2007 V.S. could not be declared ultra vires by the Court." To this end the Nepal Law Interpretation Act came into force.[111] When this amended Act came into force most of the political parties and leaders passed resolutions and demonstrated against the Act. They wanted to restore the rights of the people and to safeguard the independence of the judiciary. Most of the leaders of various political parties observed 'Kalo Kanun Divas' (Black Day) in protest of the Act.[112]

110. Nepal Pradhan Nyayalaya Ain (II Amendment) 2013 V.S. Nepal Gazette, 4 (3 Falgun, 2011 V.S.) 139-40; Gupta, op. cit., p. 84.
111. Nepal Laws (Interpretation Act), 2010 V.S., Nepal Gazette, Vol. 3, No. 26. For this purpose on March 28, Nepali Congress observed the 'Anti-Black Act Day' and called for general hartal, holding meetings and leading processions throughout the country. Other political parties also joined the fray. The aigtators demanded the restoration of the Civil Liberties and the rights of the judiciary. Chauhan, op. cit., p. 69; Gupta, op. cit., p. 92.
112. Nepal Pukar, Vol. 5, 17 January, 1955, p. 12.

On February 18, 1955 A.D. Crown Prince Mahendra assumed royal authority from King Tribhuvan. King Mahendra made the Third Amendment of the Pradhan Nayayalaya (High Court) Ain of 2009 V.S. (1952 A.D.) on March 4, 1955. He had assured on the 18th February 1955, that he would 'make suitable provision to set all doubts at rest within 15 days.'[113] King Mahendra restored Sections 2, 4 and 30 of the Interim Government of Nepal Act 1951 A.D. which had formally been deleted by the amendment of 1954. The Pradhan Nyayalaya was declared as 'the Supreme Judicial Authority' of Nepal, a court of record and the court of final appeal. Its power of issuing writs of Habeas Corpus, Mandamus, Prohibitions, Quo-Warranto, and Certiorari or any one of them for the enforcement of fundamental rights to the executive branch of the government was also restored.[114]

In 1956 A.D. the Sarbochha Adalat (Supreme Court) Act came into force.[115] According to this Act, 'the Pradhan Nayayalaya, which was the highest court of Nepal, was replaced by the Sarbochha Adalat (Supreme Court) of Nepal.' It provided that the Judges of the Sarbochha Adalat (Supreme Court) of Nepal would retire at attaining the age of sixty years instead of sixty-five as was the case earlier. They could leave their office by resignation or could be removed for incapacity, or misbehaviour, if

113. Proclamations, op. cit., p. 34.
The Nepal Congress was so overwhelmed by the Crown Prince Mahendra's message that it called it 'the Magna Carta of Nepalese history'.

114. Ibid., p. 34. See; Devakota, op. cit., pp. 285-86; Gupta, op. cit., p. 92; Chauhan, op. cit., p. 69.

115. Sarbochha Adalat Ain 1956.

so suggested by a Special Commission appointed for this purpose.[116] The Supreme Court was empowered to take action on matters amounting to its contempt.[117] It had the power of issuing writes of Habeas Corpus, Mandamus, Prohibitory Orders and to initiate Quo-Warranto, and Certiorari or any of them for the enforcement of fundamental rights.[118] It was also empowered to frame rules and regulations for the observance by the lower courts for efficient discharge of justice. But this court could not abrogate or limit or disregard the power of the Crown.[119]

The establishment of the Supreme Court, replacing the High Court, was not approved by the politically conscious sections of the Nepalese society. Addressing a mass meeting on 4th Jestha 2013 (June 1956 A.D.) Mr. B.P. Koirala said:

> "This Supreme Court is baseless. It is set up in contravention of the Constitution of 1951 A.D. If the Constitution is to be so mutilated, the Supreme Court of today will be changed into a Court tomorrow and the court of tomorrow will be something else by the acts of the King. The way it is constituted indicated clearly in an unconscious way that we are returning back to autocracy. The reactionaries are completely misusing the royal call of not duplicating the four-year mistakes and this is a very unfortunate situation."[120]

116. Ibid., Section 3(3).
117. Ibid., Section 9.
118. Ibid., Section 11.
There are two interesting cases which came before the Sarbochha Adalat (Supreme Court) before 1959 A.D. The first was a suit filed by B.P. Koirala praying that the Prime Minister Tanka Prasad Acharya be prohibited from making irresponsible statements about the forthcoming elections. The other was a case filed by Dr. K.I. Singh, the President of Samyukta Prajatantra Party against the Election Commission and the Council of Ministers.
119. Ibid., Section 12 and 14.
120. Nepal Pukar, Kathmandu, Jestha 6, 2013.

In a booklet called '<u>Sat Sal Pachi Sat Sal</u>' (Seven Years after 2007 V.S.) the author remarked:

> "This Supreme Court is neither as powerful as the Pradhan Nyayalaya (High Court) nor it is modern. In fact it has been the desire of the late as well as the present King to make this court independent, powerful and modern and the present King has made Proclamation specifically to this effect, but in lieu of power it has got modernity only in name."[121]

A former Chief Justice, Mr. Hari Prasad Pradhan, M.A., B.L. said :

> "The reactions of the Cabinet were extremely unfavourable to the orders issued by the High Court (Pradhan Nyayalaya) and therefore it decided to establish a Supreme Court, where the judges dancing to the tune of the government were appointed and the laws of the Supreme Court were framed only in name. The procedure went so far as could be done by a Cabinet headed by the leader of a political party."[122]

According to the Interim Government of Nepal Act 1951 A.D., there was to be a Comptroller and Auditor General of Nepal, who would be appointed by the King on the advice of his Ministers. His duty was to keep the accounts of the Nepal Government.[123] The reports were to be submitted to the King of Nepal. His salary and other conditions of service were to be the same as those of the judges of the Pradhan Nyayalaya of Nepal.[124]

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121. D.K. Shahi, "<u>Sat Sal Pachi Sat Sal</u>' (Kathmandu, 1957), p. 47. See: Devakota, op. cit., p. 405.
122. Devakota, op. cit., p. 406.
123. Art. 33. The Fourth Amendment of the Interim Government of Nepal Act 2007 V.S. (1951 A.D.) had replaced the Word 'Nepal Government' by 'His Majesty's Government' 2013 V.S.
124. Art. 34-35. Nepal Gazette, Vol. 2, No. 18, Lal-Mohar 2009/6/31. This Lal-Mohar had fixed the role and salaries of the Auditor General of Nepal.

This Act, also made provision for the creation of a Public Service Commission of Nepal consisting of a Chairman and other members prescribed by the King. They were to be appointed by the King with the consent of his Ministers. Their salary and other conditions of service were to be the same as those of the judges of the Pradhan Nyayalaya of Nepal. It was the duty of the Commission to conduct examinations for appointment in all branches of Civil Services.[125]

The Interim Government of Nepal Act, 1951, had clearly stated in Art. 41 : "The aim of the Interim Government shall be to create conditions, as early as possible, for holding elections for the Constituent Assembly which will frame a Constitution for Nepal." To achieve this aim an Election Commission had also been established. The Preamble of this Act had also mentioned of a 'democratic Constitution framed by a Constituent Assembly elected by the people of Nepal.'[126]

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125. Art. 64-67.
But Fifth Amendment of the Interim Government of Nepal Act 2007 V.S. (1951 A.D.) made some minor changes. According to this 'Loks Seva Ayoga' was declared as the Nepali translation of 'Public Service Commission of Nepal'. This Commission would conduct the examination of all services except military and Police Service Examinations.
See: (i) Nepal Public Service Commission Regulation Act 2009, Nepal Gazette, Vol.1No. 3 ; (ii) Nepal Public Service Commission Guidance Act 2009, Nepal Gazette, Vol.1, No. 17 ; (iii) Nepal Public Service Commission (Limitation of functions) Regulation Act 2009, Nepal Gazette, Vol. 5 No. 17 ; (iv) Nepal Public Service Commission (Procedure) Act 2009, Nepal Gazette, Vol. 2 , No. 20 ; and (v) Fifth Amendment of the Interim Government of Nepal Act 2013, Nepal Gazette, Vol. 8 , No. X.

126. Art. 70-72.

Assessment :

The main object of the revolution of 2007 V.S. (1950-51 A.D.) was to establish a Constitutional Government in Nepal. Rana autocracy was brought to an end with the cooperation of the people with the King. But instead of having a government, which should have worked under a democratic constitution framed by the elected representatives of the people forming a Constituent Assembly,[127] a powerless Advisory Assembly was formed. The Council of Ministers became merely subordinate to the King. The power of judiciary, as given by the Interim Government of Nepal Act 2007 V.S. (1951 A.D.) was severely curtailed. The interim period of eight years gave favourable opportunity to the Crown to amend, repeal or modify the Interim Government of Nepal Act 1951 A.D. so as to make the Palace the centre of all power and authority and to restore to itself the power of 1769 A.D. The dream of having a constitutional democratic government vanished because of the political unawareness of the illiterate and poor masses.

The political leaders instead of extending mutual cooperation were busy in fighting among themselves, and, as such, the King, under his re-acquired rights, decided to give a Parliamentary Constitution to the nation.

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127. Art. 68 of the Interim Government of Nepal Act 2007 V.S. (1951 A.D.) had mentioned election of a Constituent Assembly to frame the future Constitution of Nepal. But, the Fourth Amendment of the Interim Government of Nepal Act 2007 V.S. (1951 A.D.) declared that, 'it will hold an election of a Parliament.'

CHAPTER IV

(I)

In Nepal, political instability during the period 1951-1959 was the consequence primarily of the weakness of the political parties. An assessment of the political situation at the beginning of 1958 shows that a new phase had begun in the politics of the country by that time. The interim arrangement, which had been made some eight years ago, had given rise to some powerful vested interests which had worked hard to perpetuate the unsettled state of politics. Between these elements and the political parties was the monarch himself who emerged as the strongest political force. At the time of the declaration of the new set up and in the Royal speeches to the Advisory Assemblies, great emphasis was laid on the Royal Proclamation which, among other things, said that "people should thenceforth be governed according to the provisions of Democratic Constitution framed by a Constituent Assembly elected by them."[1] But political leaders were eventually outmanoeuvred to accept that the future Constitution of the country would be a Royal Award.[2] The political leaders

1. Preamble, Para I, Interim Government of Nepal Act 1951. This line was quoted many times by King Tribhuvan in his speeches to the Advisory Assembly.
See: Grishma Bahadur Devakota, Nepalko Rajnaitik Darpan, (Kathmandu 2016 V.S.)(1959 A.D.), pp. 162 & 249; Dhundiraj Sharma, Parliament ra Salhakar Sabha, (Nepal Academy, Kathmandu 2016 V.S.)(1959 A.D.), pp. 306 and 322.
2. L.S. Paral, "Nepal's Apprenticeship in Democracy 1951-60," India Quarterly, July-September (New Delhi, 1971), p. 199.

had showed their lack of talent or leadership during the past eight years. In this period it was not clear whether the elections were to be held for the Constituent Assembly or for the Parliament.[3]

Following years of instability despite installation of various party governments, King Mahendra finally decided to take the nation to the polls for generating a real representative government and, accordingly, he made a proclamation on August 5, 1955, to the effect that the general election would be held on October 1957 which happened to be the auspicious Kojagr Purnima (Full moon-day).

However, the Royal Proclamation did not specify as to whether the proposed elections were meant for calling a Constituent Assembly or for a Parliament. And with a view to expediting the work connected with the general elections, the King called the minority party leader, Tanka Prasad Acharya, to form a government. The new Prime Minister made it explicitly clear that the general elections were for Parliament and not for a Constituent Assembly and thus began a prolonged controversy.

The parties were divided in their opinion about the holding of the general elections for a Parliament because two sovereign institutions (King and Constituent Assembly) could not co-exist. Tanka Prasad Acharya who was the Prime Minister at that time, said that it had not been decided till then whether the elections should be for the Constituent Assembly or for the Parliament. But B.P. Koirala, President of the Nepali Congress, filed a suit

3. R.S. Chauhan, The Political Development in Nepal 1950-70 (A Conflict between the Tradition and Modernity) (New Delhi, 1971), p. 114.

in the Supreme Court of Nepal against the Government pleading that the King had already proclaimed : "It has been Our desire and determination that the administration of Our country be carried out henceforth on the basis of a democratic Constitution framed by the Constituent Assembly elected by the people."[4] Prime Minister of Nepal, Acharya had no right to speak against the Royal Proclamation. But T.P. Acharya said that he had issued the statement in his personal capacity. Later on, the Supreme Court dismissed the case.[5]

This issue in fact had been raised by royalists like R.K. Shah, T.P. Acharya, Randhir Subba, K.I. Singh and Ranganath Sharma, who represented factious of Nepal National Congress, Nepal Praja Parishad, Nepal Rastrabadi Gorkha Parishad, United Democratic Front and Nepal Prajatantrik Mahasabha. They said that the general elections should be held for the Parliament because two sovereign institutions, King and Constituent Assembly could not co-exist in the country. The other group which consisted of the Nepali Congress, Nepali National Congress (Regmi Group), Communist Party of Nepal, Praja Parishad of Nepal (Bhadrakali Group) was in favour of elections to the Constituent Assembly which had been declared by King Tribhuwan in his Royal Address of the 18th February 1951, and had been repeated by King Tribhuvan and King Mahendra in their addresses to the Advisory Assembly. There was ample evidence to show that this issue was raised by the Royalist group. In fact, the real brain behind this controversy was the King himself.

4. Supra, Chapter III, f.n. 2.
5. Kanun Patrika, (Kathmandu, 2016), Decision No. 56, p. 278.

Opinions of Parties and Political Leaders on the Question of Constituent Assembly Vs. Parliament

Addressing a mass meeting at Martyrs' Park at Biratnagar on June 1956 (26th Jestha, 2013 V.S.), B.P. Koirala said: "If the constitution is imposed upon us by the King's command, we are made puppets by the King and are made parties to the constitution framed undemocratically by the King. This is diametrically opposed to the democratic principles. The proposed Parliament shall be responsible to the King, and not to the people. If this question which is being discussed at the political level, has any basis, this is an attempt to dupe the people regarding elections. If such a step, devoid in itself of foresight, is initiated by the King in any circumstances, it is certain that the Nepali Congress shall boycott the elections called under the aforesaid conditions.

The Nepali Congress is committed to the principle that sovereignty lies with the people and is opposed to the principle that it lies with the King. Once sovereignty is usurped by the King under the Constitution, it shall be construed as transferring the sovereignty to the King by the Parliament elected under the proposed Constitution. If the people are denied the opportunity to their right of framing their own Constitution, the Nepali Congress shall boycott such an election and shall set itself to fight such eventuality."

In July 1956 (4th Ashad, 2013 V.S.), addressing a mass meeting at Lainchaur, Kathmandu, he again said : "A Nationwide election cannot be organised like the ceremonial Coronation. One

thing must be clear which is whether the election is for the Constituent Assembly or for the Parliament, whether or not the elected representatives are empowered to frame laws for the country or whether they are empowered to exercise the theory of the separation of power. Clarification on these issues should be categorically made. The Nepali Congress is committed to the principle that the country belongs to the people, not to the Royal Palace. So the Nepali Congress is firmly committed to the principle that the destiny of the country shall be decided by the elected representatives of the country. Almost all responsible political parties felt the need for the Constitutional leadership of the King. Therefore the position of the King is clear. Even against this background, if the Constituent Assembly deemed it necessary for Kingship and framed the Constitution accordingly, the King shall be bound to quit, and we are dead sure that the King, committed to democracy, would not stick to his Throne once he is rejected by the people. For many reasons we want a King functioning under a Constitution. And the King shall be bound to move within the limitations imposed by the Constitution."

D.R. Regmi, President of the Nepali National Congress, stated on the 6th Ashad, 2013 V.S. (July, 1956 A.D.): "The sovereignty of any country according to the democratic tradition is vested in the people. And it is the inherent right of the people to elect and organise any form of government. The post-election Constituent Assembly shall definitely be sovereign. On the other hand, if attempts were made to mar the objective of the election, it shall be not only an assault on democracy but shall

also create a wide-spread threat to peace."

The resolution passed by the Central Executive of the Nepali National Congress, which assembled on 6th Ashad 2013 V.S. (July, 1956), said: "If the proposed election will be held by some machination for any thing under any name other than Constituent Assembly with sovereign powers endowed to it, the Nepali National Congress has to denounce such a move vehemently. The view that sovereignty is vested in the King can never be acceptable to this party. As soon as the democratic system is restored, the fact of sovereignty being vested in the people remains indisputable. In a democratic set up, the people are fully empowered to decide whether or not monarchy."

The synopsis of the Joint Statement issued by D.R. Regmi of the National Congress, Ganesh Man Singh of Nepali Congress and Puspa Lal Shrestha of Nepal Communist Party on the 27th of Ashad (August 1956) runs like this: "The powers of the reactionary revivalists are growing these days. Under these circumstances, it is therefore, urgent that all the democratic forces of the country are united. The basic of our unity should be for the achievement of the coming election for sovereign Constituent Assembly. For this purpose we will negotiate with all concerned to achieve the consolidation of all democratic parties."

During the inaugural speech of the Nepal Communist Party on 15th of Jestha 2014 (July 1957) at Janakpur, comrade Keshar Jung Rayamajhi, observed: "Under these under-developed conditions of the country the talk of socialism is not only impractical but will also be a folly. So long as people do not have a basis to stand

on to exercise democracy or, in other words, as long as the country does not accumulate resources through industrialisation, even the path to a republican democracy will be hard to follow, let alone socialism and communism and, therefore, the Communist Party shall strive for the development of democracy and the Communist Party demands a sovereign Assembly."

On the 27th Jestha, 2014 (July 1957) B.P. Koirala, addressing a mass meeting at Tin Dhara Pakshala said : "The right whether the election shall be held for Constituent Assembly or for Parliament did not come to the people through the favour of a particular person; it came through the revolution of 1950-51. The country will not prosper under a Parliament." He further said: "The question regarding Kingship is not to be decided by the King on his own, but to be decided by popular will. Instead of holding the election for Parliament, it would have been better if the people were given to frame the Constitution."

Kesharjung Raymajhi, General Secretary of the Nepal Communist Party has stated that, "The Prime Minister's announcement that the elections will be for a Parliament is against the Constitution Act of 1951, against the proclamation of 1951 of King Tribhuvan, and against the People's Representation Act of 1952." Puspa Lal, the Communist Leader, said in Kathmandu, regarding the question of a Constituent Assembly Vs. Parliament that, "The question of a Constituent Assembly or a Parliament is futile because the matter is quite clear from the Royal Proclamation of King Tribhuvan in 2007."

But on the other hand there were many who strongly held

the view that the elections could only be for a Parliament. It is true that some like Bhadrakali Misra said: "Our party has yet to come to the conclusion whether the election shall be held for a Constituent Assembly or for the Parliament." But a few days later he expressed the definite opinion that the elections would be for a Parliament. For example, on 27th of Srawan, 2013 (August 1956) he said: "The elections shall not be held for All-sovereign Constituent Assembly because there cannot be two Sovereign bodies, on the one hand the King and on the other a Sovereign Constituent Assembly. Therefore, the King under a Constitutional monarchy, shall frame a fully democratic Constitution for the country or let this Constitution be framed by His Majesty's Government or be framed through the elected representatives or by political experts. But the Constitution shall be framed before the elections, and such election shall be held within the frame-work of the same Constitution. The question of All-Sovereign Constituent Assembly does not arise."

The general meeting of the all-Nepal delegates of the Nepal Praja Parishad on the 26th of Jestha (July, 1957) adopted a resolution which said that: "the election should be held for a full Sovereign Parliament ... Let the election be held for Parliament, under a Constitution granted by the King (who is fully empowered to legislature) ... This meeting is of the opinion that the motive inherent in the demand for a Constituent Assembly has a sinister implication of challenging the very sovereignty of the King and of putting it against the touchstone of popular will."

Fall of Acharya Government :

However, the Acharya government, which lasted 18 months, failed to work for the intended general elections and consequently found itself dissolved, on the Prime Minister's own confession, on account of its inability to arrange for the national poll (13th July, 1957).

Determined on the issue of general elections, the King deputised Dr. K.I. Singh, the leader of United Democratic Party, to contact political parties so as to smoothen out a way to forming a new government. But the approach of "the slippery and mercurial political Robinhood of Nepal" was not be agreeable to the comparatively sophisticated leaders of the other parties.

Ever since the formation of the United Democratic Party government under K.I. Singh, other parties were not satisfied with the intention of the King. Three political parties, the Nepali Congress, N.N. Congress and Praja Parishad decided to form a new organisation named "The Democratic Front". The Front decided to forget "minor differences among the parties and 'to face' the dictatorial tendencies of the government". The Party was organised with the objective of uniting the democratic forces and cope with the imminent danger to democracy and to protect the fundamental civil rights of the people'. The Press statement issued by the Democratic Front criticised the theory of Divine Right of Kingship.

It also said that the Election Commission was busy but the body was not feeling any responsibility in the matter.

It was a matter of surprise that the commission had never approached the King and instead had informed the political parties a few months back that the elections would not be held on the scheduled date.

On October 6, 1957, King announced from Radio Nepal that 'the government had represented to him the impossibility of holding the elections on the scheduled date', and expressed his regret for having been obliged to make such an announcement. After the announcement the country witnessed strikes, processions and demonstrations in protest against the postponement of the elections. On October 8, 1957, the Front observed 'Black Day'. It demanded dissolution of the government and requested His Majesty to form the government of the Democratic Front to conduct the elections in due time. For the realisation of this demand it was decided to launch a Civil Disobedience Movement from December 7, 1957. The Action Committee was formed and arrangement for Satyagraha was made in various parts of the country. In fact, this movement was not intended against the King whom the Front revered, as its aim was the establishment of a constitutional monarchy.

The government was also facing problems on account of the non-cooperative attitude of government officials, businessmen and general mass against its remarkable undemocratic nature. Then Dr. Singh submitted his resignation and it was accepted by the King on November 14, 1957, and King Mahendra began to rule directly.

About the general elections the United Democratic Front

leaders submitted several petitions to the King. To discuss political matters specially relating to the general elections, King Mahendra called a political conference on December 5, 1957. In this conference except the Communist Party of Nepal, all other party leaders were invited to discuss the political situation of the country. The King told the leaders that he would fix the actual date for the elections after consulting the Election Commissioner. The leaders of the Democratic Front felt that the sudden call of a political conference by the King was with the sole motive of getting the Civil Disobedience Movement put off which was scheduled to commence on December 7, 1957. But the leaders went to the meeting. After discussion, the leaders expressed their opinion that the General elections could be held within six months. But the King appealed to the representatives of the political parties 'to forget their personal interests and put forward honest suggestions with the sole objectives of achieving the good of the country'. Except the leaders of the Democratic front all other leaders of the parties were of the view that the election should be held on February 12, 1959. Meanwhile attempts were made to effect a settlement with the intention of avoiding the proposed Civil Disobedience Movement. However, the movement started on December 7, and lasted till December 15. Later on, on December 15, King Mahendra issued a proclamation stating that general elections would be held from February 18, 1959.

This proclamation of the King has been said to rank "in importance with King Tribhuvan's Proclamation of February 18, 1951." The King singled out continuing political instability as

the principal reason for a lack of progress in the country during the past seven years. "In order to remedy this situation he proposed the early establishment of (a) a Constitution Drafting Commission in order to prepare a Constitution incorporating the idea of a bicameral legislature, (b) a nominated Advisory Assembly in the interim period before the elections, and (c) a government without a Prime Minister, consisting of independents as well as representatives of political parties."[6]

The object of the King's policy was quite clear. He was not interested in becoming a mere constitutional head of the State; he wanted to become the sovereign in every sense of the term.[7] On February 1, 1958, King Mahendra made an announcement in which he stated: 'Elections would be held for the bicameral legislature in accordance with the Constitution to be drafted by a Drafting Commission ... General Elections shall be held for Parliament with full mandate to maintain and uphold national sovereignty and popular liberties, and a caretaker government shall be composed of people with particular interest in the development of the country. Such a cabinet shall therefore, be of one or more political parties having no Prime Minister. The Chairmanship of such a Cabinet shall be assumed by me personally or by some one among the Ministers to be designated by me..."[8]

6. Bhuwan Lal Joshi and Leo E. Rose, Democratic Innovations in Nepal : A Case Study of Political Acculturation (Berkeley, 1966), pp. 212-213.

7. Anirudhra Gupta, Politics in Nepal : A Study of Post-Rana Political Development and Party Politics (Bombay, 1964), p. 125.

8. Proclamations, Speeches and Messages : H.M. King Mahendra, Vol. I, (Department of Publicity, Ministry of Information and Broadcasting, HMG/Nepal, 1967), pp. 106-107. Later on, on May 15, 1958, King constituted a Cabinet under the Chairmanship of Mr. Suvarna Shamsher. See: Appendix 17.

The political parties welcomed and accepted the Royal offer. Thus came to an end the hope of a Constitution framed by an elected Constituent Assembly, and a new phase may be said to start in the constitutional development of Nepal.

The Constitution Drafting Commission :

The Constitution Drafting Commission, as envisaged in the Royal announcement of February 1, 1958, was set up with Bhagwati Prasad Singh as Chairman and Ram Raj Pant, Surya Prasad Upadhyaya, Randhir Subba and Hora Prasad Joshi as members. Hora Prasad Joshi was the member-Secretary of the Commission.[9] The Royal Message to the Nation on February 1, 1958 had also said :

> "Foriegn advisers also shall be associated, if and when necessary to assist and advise the Committee.."[10]

As Mr. Sri Prakash and Dr. R.U. Singh were invited by Maharaja Padma Shamsher to advise in the drafting of the Constitution Act of 1948, Sir Ivor Jennings was invited by the King to advise the Drafting Commission in the drafting of the Constitution of 1959.[11]

The Commission, as it was constituted, was generally well received by the political parties. But the attitude of the press was more critical. The Samaj, a daily from Kathmandu had

9. The Constitution Drafting Commission was announced on March 16, 1958. Royal Palace Press Attache Office, Kathmandu.
10. Proclamatations, op. cit., p. 106.
11. Nepal Today, (Calcutta, 1962), Vol. 4, No. 22 and 23, November 1, 1963, p. 685.
Here it may also be pointed out that Sri Loka Darshan Vajracharya, Personal Secretary to H.M. King Mahendra was sent to a number of countries having the monarchical system like Great Britain, the Scandinavian countries, Ethiopia and other to study their Constitutions.

observed that the Commission should have been set up five years ago. It pointed out that "as mere ability was not sufficient to ensure a democratic Constitution", the members should neither indulge in witch-hunting nor in sycophancy, but should devote themselves honesty to the task assigned to them.[12] In fact, "the Commission consisted of capable persons who were to draft a democratic constitution in keeping with the times, the situation and the circumstances, so as to safeguard the sovereign, independence of the country and the democratic rights of the people."[13] There were much criticism in the Nepali papers about the composition of the Commission and the sincerity of its members. It was suggested that the commission should have been more broad-based and representative. In fact, it was pointed out that deep resentment was felt by the members of the Nepal Praja Parishad and of the Nepali National Congress because representatives of the Nepali Congress, the Gorkha Parishad and civil servants alone were included in the Constitution Drafting Commission.

The Constitution Drafting Commission held its first meeting on March 27, 1958, to discuss the broad outlines of the Constitution. It may be recalled here that King Mahendra, in his Royal message, of the 1st February, had stated that the help of foreign constitutional experts would be utilized. Many constitutional experts from friendly countries, the U.K., the U.S.A. France and and Japan, were expected to help the Constitution Drafting Commission.[14] But only Sir Ivor Jennings was made available

12. Samaj Daily (Kathmandu), March 17, 1958.
13. Naya Samaj Daily, (Kathmandu), March 17, 1958.
14. Kalpana and Motherland Daily, (Kathmandu), April 3, 1958,

at the request of the Government of Nepal.[15] He arrived in Kathmandu on March 28, 1958.[16] The constitution Drafting Commission held a meeting on March 31, 1958, to discuss the rules regarding the functions of the Commission. Sir Ivor Jennings was present in the meeting and submitted his draft containing 81-points. It was reported that the Commission and invited fifteen political parties, including the Communist Party and other parallel organisations to submit their suggestions regarding the Constitution.[17] The King granted his first audience to the Chairman and other members of the Commission on April 5, 1958. Sir Ivon Jennings had already submitted his eighty-one points to the Commission, but later on after discussion, he submitted his second and third drafts. He revised the draft proposals,[18] and discussed these with the members of the Commission and also with the King. He had two audiences with the King to discuss the future Constitution of Nepal. The Constitution was presumably drafted in English and was then translated into Nepali. The British Constitutional expert delivered a lecture before the Nepal Council for Asian Relations and World Affairs saying: 'the Constitution of Nepal should be drafted according to local conditions'. He expressed the opinions that "mere imitation of other constitutions would not help."[19] In an interview with a daily local paper, the Motherland, he said: "To be

15. Nepal Samachar Daily, (Kathmandu), March 21, 1958.
16. Motherland Daily, (Kathmandu), March 29, 1958.
17. Kalpana Daily, (Kathmandu), April 3, 1958.
18. See Appendix 12.
19. Lecture delivered at Ranjana Cinema Hall on April 12, 1958.

effective a Constitution must respect local environment. The condition of Nepal is quite unlike that of other countries; and though the general principles of the government might be more or less the same, procedural matters should not be based on the right plane of the established doctrines. Speaking on the Principles and Framing a Constitution, Sir Ivor Jennings said: "It is a tough job. Since history is always changing constitutions, cannot be unchangeable. Therefore, there should always be provisions to incorporate such eventual modifications in it. The best way, therefore, could make it so is by making it short and simple."[20]

Several suggestions were made to the Drafting Commission. The general view was that 'though it was the right of the people to draft the Constitution, they had handed over this right to the King with full confidence in him. The Commission would draft a Constitution which would guarantee the protection of the rights of the people under a constitutional monarchy. The Constitution should be drafted in the interest of the people and not only to placate the King.[21] Another paper came out with the comment that a great responsibility was placed on the members of the Commission in drafting the constitution. Many party leaders gave suggestions for the smooth working of Parliamentary democracy under the aegis of constitutional Monarchy.[22]

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19. ~~Lecture delivered at Ranjana Cinema Hall on April 12, 1958.~~
20. Motherland Daily, Kathmandu, April 13, 1958.
21. Kalpana Daily, Kathmandu, May 22, 1958.
22. Samukta Prayasa Weekly, Kathmandu, May 3, 1958.

While the members of the Commission were busy in drafting the new Constitution of Nepal, there was a spate of speculation about the delay being made in the announcement of the Constitution. Surprise was expressed that even in a period of three months the Commission had not been able to prepare the Nepali rendering of the draft prepared by Sir Ivor Jennings within a week. The members of the Commission finalised the draft after seven months of their work. It was formally signed by the members on September 7, 1958. The Commission was reported to be waiting for the permission of the King for submitting it to him. In fact, the Commission was busy for 155 days and it completed its work after 81 sittings.[23]

Meanwhile, the King was touring the different parts of the country. The Commission was waiting for his reply. At that time many suggested that the Draft Constitution should be made public and be discussed by the Advisory Assembly, before being submitted to the King for his approval.[24] King Mahendra called the members of the Commission for a general discussion on the Draft Constitution on November 2, 1958. It was on this date that Constitution Drafting Commission submitted the Draft to the King.

23. Report submitted by the Secretary of the Commission, Mr. Hora Prasad Joshi, on September 7, 1958. Kalpana Daily, Kathmandu, September 8, 1958.
24. The Advisory Assembly was powerless in this matter but the then Home Minister Dilli Raman Regmi and his followers demanded that the Draft Constitution should be tabled in the Assembly by the Minister concerned. But the Minister of Law and other Parliamentary Affairs who was a member of the Constitution Drafting Commission rejected the proposal and said that 'According to the Royal Proclamation and the powers given to them, the Commission has no right to table the draft constitution in the Assembly.' The King remained silent on this matter.

In the meantime, party leaders and newspapers demanded that 'as the date of the general elections as declared by the King was quite close, the draft constitution should be placed immediately before the people for their opinion regarding the question whether the draft constitution was democratic or not.' They also demanded the dissolution of the Council of Ministers before the general elections.

Meanwhile the demand for the immediate release of the Constituion was going on. Many leaders demanded that "the draft constitution be published before the public before its being approved by the King. The publication of the draft constitution was a legal necessity because it was the right of the people to know the provisions of the Constitution. In the absence of the Constitution, it is very difficult for the candidates to file their nomination papers for the general elections. If unnecessary delay was made in placing the Constitution before the people, reactionary forces, responsible for maintaining chaotic conditions in the country for the last eight years, would definitely take advantage of the situation. There was a demand that "without the Constitution, it would be unconstitutional to hold the elections. If the Constitution is not published before the elections, we shall be compelled to doubt the intentions of the political parties represented in the Constitution."[25] The leaders demanded that the King should direct the business of the government for the time being because the caretaker government was formed for that purpose on May 15, 1958. The leaders attacked the Council of

25. Editorials of Halkhabar, Samaj and Samukta Prayasa, September 9, 1958.

Ministers for delaying the release of the Constitution.

There was a rumour that the Council of Ministers had not yet been able to arrive at a decision regarding the Constitution owing to differences of opinion among its members. A Press Note released by the Council of Ministers said that the Council was engaged in discussing the Constitution.[26] Again another Press Note of 30th January, 1959, gave an assurance that the Constitution would be made public before the elections. The Council of Ministers was reported to have made necessary arrangements for obtaining the sanction of the King through wireless to submit the Draft Constitution for his approval after concluding discussions on it. It was believed that the Royal Seal (Lal-Mohar) would be affixed to the Constitution at Pokhara Camp. In the meantime, the Chairman of the Council of Ministers, General Suvarna Shamsher, left for Pokhara where a meeting of the Council of Ministers was expected to take place in the presence of the King. The Chairman of the Council of Ministers explained that 'the delay was due to the fact that the Constitution was submitted very late to the Council, and that it would take time to study it properly.' He added that 'the constitution would be published after the King returned from his tour.'[27] Randhir Subba, Minister for Law and Parliamentary Affairs, also said that, 'the People's Representative Act was sufficient basis for the elections to be held as scheduled!'[28] This explicit statement should have set at rest the confusing speculations regarding the publication of the Constitution. But the demand

26. Press Note issued by HMG/Nepal, (Publicity Department.), December 24, 1958.
27. Philingo Weekly, Kathmandu, January 17, 1959.
28. The Commoner Daily, Kathmandu, January 19, 1959.

of the opposition parties for its immediate publication continued to be voiced.[29]

King Mahendra returned to Kathmandu on February 2, 1959, and after the final discussion with the members of the Council of Ministers and the members of the Constitution Drafting Commission, he decided to promulgate the Constitution. And six days before the elections were due to begin, i.e., on 12 February, 1959, the King presented the Constitution of the Kingdom of Nepal to General Suvarna Shamsher, Chairman of the Council of Ministers, at a ceremony at Hanuman Dhoka, the Ancestral Royal Palace.

Promulgating the Constitution of the Kingdom of Nepal, the King announced:

> "We are pleased to have been able to promulgate this Constitution of the Kingdom of Nepal, with good wishes for the happiness, progress and prosperity of all the beloved subjects, including future generations, for the welfare and proper organisation of the people of this ancient country ... . We hope that this Constitution will firmly unite the entire people of the Kingdom of Nepal, for all the time to come ... ."[30]

The King also announced that the Constitution Drafting Commission had been dissolved.[31]

The new Constitution, though promulgated by King Mahendra on February 12, 1959, came into effect on the midnight of June 30 of the same year after the newly elected Parliament was sworn in. And the Government of Nepal Act 2007 V.S. (Interim Constitution of Nepal 1951 A.D.) was repealed from this date.[32]

29. The Motherland Daily, Kathmandu, January 19, 1959.
30. Proclamations, op. cit., p. 136. His Majesty the King Mahendra Bir Bikram Shah Deva had promulgated the Constitution of the Kingdom of Nepal in accordance with the powers reserved by Him in the Interim Government of Nepal Act, 2007, amended.
31. Ibid., p. 136.
32. Art. 74 of the Constitution of the Kingdom of Nepal.

THE CONSTITUTION OF THE KINGDOM OF NEPAL

(II)

Sources, Preamble and Objectives of the Constitution of the Kingdom of Nepal

Source :

The history of Constitutional development in Nepal since 2004 V.S. (1948A.D.) presents a strange spectacle. Though the constitutional development did not start along right lines, it paved the way for the establishment of a constitutional government with a written constitution, as was deemed necessary for governing people in a democratic way. But all the constitutions were the gift of the sovereign who remained the source of the ultimate power.

The Constitution of 1948 was interesting as it foreshadowed some of the essential features of the latter one. The Constitution of 1948 was implemented it was said to establish a kind of democracy in Nepal which would suit the genius of the country. The essential features of the Constitution were as already discussed a Parliament, a Council of Ministers, universal suffrage, fundamental rights and an independent judiciary. But the composition and powers of the Parliament and the Council of Ministers were far from being democratic, and the fundamental rights were greatly restricted. Under this Constitution, the King had virtually no powers, and was merely the symbol of unity of the State. The executive authority of Nepal was to be exercised solely by the Maharaja.

After the Revolution, King Tribhuban gave an Interim Constitution. He announced his intention to set-up a Constituent Assembly and to take over the administration in his own hands till the

elections. The revolution ended the country-old family oligarchy, upheld the rights of the people but put a premium on the monarchy rather than on the people. This Constitution had established an Advisory Assembly, a Council of Ministers, an independent judiciary and fundamental rights under the general name of the Directive Principles of State Policy. In this Constitution, the King became the real head of the government and the state. The King had announced to set up a Consititituent Assembly within a short period. But the contemplated formation of the Constituent Assembly could not materialize for the ensuring eight years.[33]

The two earlier Constitutions of 1948 and 1951 may be called the sources of the 1959 Constitution. If we compare the features of this Constitution with those of the two earlier Constitutions, one finds that in many important respects, this Constitution has borrowed from the two earlier ones.

In a note circulated to the Drafting Committee by a member (which has remained unpublished), it was stated: 'The present draft is based on the Interim Constitution. The Preamble and the Directive Principles of State Policy formulated by the Interim Constitution as a guide to government point at the direction His Majesty intended the Constitution to develop.'

The Constitution of 1948 was the gift of the Maharaja because the supreme authority of the state was vested in him through the Panjapatra. But the two subsequent Constitutions, the Interim Constitution of 1951 and the Constitution of the Kingdom of Nepal,

33. A. Appadorai and L.S. Baral, "The Constitution of Nepal", International Studies (New Delhi, 1960), Vol. I, 3 January, 1960, (type-script), p. 7.

1959, were the gift of the King and were promulgated by him in exercise of sovereign powers and prerogatives vested in him according to tradition and customs of the country. Moreover, the Constitution of 1948 and 1951 were not the fundamental law of the land whereas the Constitution of 1959 was said to be so.

The history of Nepalese political parties during the last eight years (1951-1959) had not been an encouraging one, because the parties had hitherto failed to give a proper lead to the country, and because they had brought unhealthy influence on the politics of Nepal. The political instability, which lay at the root of most of the country's troubles, had been caused by the failure of Nepalese leaders to rise above personal or party interests. The contemplated formation of the Constituent Assembly could not materialise for the eight years that followed. While this had been variously explained by various political elements in Nepal, it would appear that the failure of parties and groups to work out a stable pattern of government and administration was largely responsible for the delay. As many as six amendments were made during the interim period and different Advisory Councils were formed at different times as a stop-gap arrangement for associating political elements with the government. The initiative thus rested all along with the monarch although demonstrations took place in Kathmandu demanding elections to the Assembly. There were thus two factors, the urgency of reforms, on the one hand, and the inability of the political parties to agree, on the other, inevitably the Constitution was in the nature of Royal award."[34]

34. Ibid., p. 8.

Preamble :

The Constitution of the Kingdom of Nepal, 1959, consisted of 77 articles and was divided into ten parts. It was based on the fundamental idea that the real power of the state was vested in the King in accordance with the tradition and customs of the country.

The Preamble of the Constitution stated :

> "Whereas ..... I, King Mehdnra Bir Bikram Shah Deva in the exercise of the sovereign powers and prerogatives vesting in Us, in accordance with the tradition and custom of our country, and which devolved on Us from Our August and respected forefathers, do hereby enact and promulgate the fundamental law entitled 'The Constitution of the Kingdom of Nepal ... ."35

The Preamble also made it clear that the Constitution of the Kingdom of Nepal was not establishing a Parliamentary government.

> "Whereas, we also being firmly resolved to help our subjects to attain all-round progress and achieve the fullest development of their personality; to ensure to them political, social and economic justice; and cement the unity of the nation by bringing about political stability through the establishment of an efficient monarchical form of government responsive to the wishes of the people. ..."36

Two things come out clearly from this Preamble. First, the Constitution was given by the King. It embodied the ideas of the new King. Having wanted to give a Constitution which should have democratic peraphernalia minus its essence, namely, the responsibility of the supreme executive to the representatives of the people. Secondly, the Constitution aimed at an efficient monarchical form of government responsive to the wishes of the people. This was said to be in accordance with the traditions and customs of the country.

35. Preamble, Para III, The Constitution of the Kingdom of Nepal.

Objectives :

The analytical survey of the objectives of this Constitution is based on three points : (i) Promulgation of the Constitution of 1959 by Royal Proclamation; (ii) second para of the Preamble of the Constitution; and (iii) the Press Note issued by His Majesty's Government to clarify the objectives of this Constitution.

His Majesty King Mahendra Bir Bikram Shah Deva had said at the time of the promulgation of this Constitution :

> "It has been and continues to be Our long and cherished desire that this Constitution conferred by Us may be most effective in cementing the unity of the Nation and making the Nepalese people prosperous, honoured, and progressive for a long time to come ... ."[37]

The Press Note issued by His Majesty's Government had clearly explained the objectives of this Constitution:

> "His Majesty King Mahendra Bir Bickram Shah Deva, being anxious to discharge the responsibilities devolved upon him by virtue of the firm resolve of the Father of the Nation and in order to carry into effect that said firm resolve and so to establish real democracy in this country of Ours has today by Royal Proclamation given a Constitution to the Kingdom of Nepal."[38]

First, it therefore, becomes necessary to focus our attention on the place that the Crown holds in the Nepalese society. Monarchy had held Nepal together through all these years of trials and troubles. Without the cementing influence of the Crown, Nepal could have disintegrated. It can be asserted that without that stabilising influence (of the Crown), Nepal would have suffered the greatest disaster during the course of the

37. Proclamation from His Majesty, 12 February, 1959.
38. Press Note of HMG/Nepal, February 12, 1959.

eight years from 1951 to 1959; it might even have been that Nepal would have ceased to be a sovereign state. All political parties realised this. They knew that there was one institution that needed to be preserved, to be carefully nourished, and that institution was kingship. Secondly, to promote the happiness and prosperity of the people of Nepal, to ensure them political, social and economic justice; to cement the unity of the nation by bringing about political stability through the establishment of an efficient monarchical form of government responsive to the wishes of the people - such were said to be its aims. But in its objectives, the formation of a democratic system was not mentioned. But thirdly, in the Press Note of 12th February, 1959 it was stated that the King through this Constitution wanted to establish real democracy in Nepal. But nowhere in the Preamble of this Constitution, the word, 'Parliamentary type of government' had been mentioned, nor has it been said that the establishment of real democracy was an objective of the Constitution. Only in the Press Note issued by His Majesty's Government these words 'real democracy' find a place. The Constitution had emanated from the King and not from a Constituent Assembly, although such an assembly had been accepted on principle in the Royal Proclamation of 1951 A.D.'.

Commending the King for having handed over the powers of administration to the people several party leaders as well as local and foreign newspapers and commentators expressed the hope of the establishment of a democratic government through the new Constitution. The general reaction was favourable.

Suvarna Shamsher, Chairman of the Council of Ministers of

the caretaker government said: 'The Constitution assured of due respect for the majority opinion in the appointment of the Prime Minister'. He deprecated unstudied and off-hand criticism of the Constitution.'[39] S.P.Upadhyaya, one of the pillars of the Nepali Congress and member of the Constitution Drafting Commission, said: "The new Constitution was fully democratic taking into consideration the level of political consciousness that the people had attained."[40] In the opinion of D.R. Regmi, one of the member of the caretaker government the constitution "was fully democratic and capable of strengthing democracy according to the situation prevailing in the country."[41] The Constitution of 1959 had promised for the establishment of Parliamentary Democracy within the frame work of a constitutional monarchy. The Constitution was remarkably liberal and, in retrospect, it does appear as if the reforms introduced in 1959 might have had a better chance of survival if the Constitutional evolution in Nepal had been more gradual.[42]

But criticising the Constitution, the Nepal Communist Party said:

> "The New Constitution, is 'feudal in character'. It did not find it more progressive than the Rana Constitution of 1948; it was, in its view, frankly 'undemocratic', being loaded with the King's discretionary powers. The party exhorted all "democratic elements, leftists and revolutionary representatives of the people to muster strong and fight the Constitution tooth and nail."[43]

39. Press statement issued by the Chairman of the Council of Ministers, Publicity Department, HMG/Nepal, February 12, 1959.
40. Halkhabar, Kathmandu, February 13, 1959.
41. Nepal Samachar Daily, February 13, 1959.
42. The Times of India, New Delhi, 19 December, 1962.
43. Nepal Samachar, Kathmandu, February 13, 1959.

An editorial in the Halkhabar said :

> 'The Constitution is detrimental to progress. It would never bring about political stability in the country. In fact, this Constitution was vague, ambiguous and verbose'44

In the words of another paper,

> 'the Constitution, instead of providing power to the people, concentrated all in the hands of the King'. The Constitution did not observe any 'fundamental democratic principle.'45

The general comment on the rigidity of the Constitution could be summed up as follows: "Such a rigid Constitution would not be conducive to democratic development, political stability and the establishment of a welfare state in the country like Nepal." Again it is pointed out that, 'the Constitution' is incapable of leading the people towards democracy.

Supporting the new Constitution, Kalpana Daily, expressed its opinion saying that

> 'the Constitution which is being granted by the King to the people will be more progressive and scientific than that which would have been framed by the representatives of the people.'46

Foreign writers have not commended the new Constitution. Prof. Werner Levi has expressed his opinion on the new Constitution saying that

> 'the discretionary power of the King was so extensive that the eventual and final form of Nepal's Government will depend upon the use which is made of the Constitution. It would be a pure parliamentary system of government, or it could be an absolute monarchy ... . He can suspend

44. Editorial Column of Halkhabar Daily, February 15, 1959.
45. Editorial Column of Nayazamana Weekly, Kathmandu, Feb. 15, 1959.
46. Kalpana Daily, (Kathmandu), February 16, 1959.

> the Cabinet and rule directly or with the newly appointed Ministers, he can prorogue the Parliament for a certain period or call it for a special sitting; he has a veto over all legislation and constitutional amendments. If the King declares a national emergency for a variety of a reason at his discretion, he has practically dictatorial powers, though he cannot interfere with the civil rights.'47

Mr. Bengamin N. Schoenfield comments :

> 'The New Constitution, like that of India, separates the legislative, judiciary and executive areas of the government but without the usual accompanying checks and balances.'48

B.L. Joshi and Leo Rose say that, 'while the Constitution genera--lly followed the form and, in some cases, even the language of the 1950 Indian Constitution in spirit it was much closer to the principles incorporated in King Tribhuvan's Royal Proclamation of January 10, 1954:

Again it has been said that 'the establishment of the Crown as the source of all legislative, executive, and judicial authority, an essential feature of the 1954 proclamation, was retained in the new Constitution.[49] Leo Rose and Margaret W. Fisher commenting on the New Constitution say that, 'The 1959 Constitution was in most respects modelled on the British Constitutional system as modified and adopted by India. All the usual characteristics of Parliamentary democracy, including the concept of ministeraial responsibility to the legislature, were in evidence, although occasionally in somewhat diluted form.[50] According to Anirudhra

47. Werner Levi, "Nepal's New Era" (Art.), Far Eastern Survey, October, 1959.
48. Benjamin N. Schoenfield, "Nepal's New Constitution" (Art.) Pacific Affairs, XXXII, 4, 1959.
49. Joshi and Rose, op. cit., p. 285.
50. Leo E. Rose and Margaret W. Fisher, The Politics of Nepal: Persistence and Change in an Asian Monarchy, South Asian Political System, (General Editor: Richard L. Park), (Longon, 1970), pp. 50-51.

Gupta:

> "The theory that the King was the source of all power, which King Tribhuvan had propounded in his famous Proclamation of 13th February 1954 and to which his son had adhered with unflinching devotion, was re-vindicated in the Constitution."

He further says that,

> 'in judging the New Constitution, however, it is necessary to take note of the basic concept which ran through it from the beginning to the end.'[51]

The author agrees with the view of another Indian Scholar who says that,

> 'The Constitution of 1959, which King Mahendra bestowed upon the country, therefore, did not mean that the King had turned democratic; it only meant that the democratic pretensions were necessary to keep the traditional forces under his thumb on the one hand and to assuage the feelings of the common man on the other. The politician parties opposing the traditional forces were, at the same time, finding it difficult in the prevailing conditions, to strike a decisive blow at the vested interests and the reactionaries. They could not afford to prolong the struggle because, among other things, they found that the King was consolidating his position as the main bastion of traditional forces and if they did not step into the administration, in however a limited fashion, they would lose the battle for a long time to come. They knew that, with the King emerging as their champion and head, the traditional forces would fortify their position and make it even more difficult for progressive forces to demolish their stranglehold over the Nepalese people. In this context the political parties though it prudent to accept the Constitution of 1959."[52]

Fundamental Rights :

The Consititution of 1948 had the appearance of being a liberal document. It contained a Chapter entitled "Fundamental Rights and Duties", which guaranteed certain rights to the citizens of Nepal 'subject to the principles of public order

51. Gupta, op. cit., pp. 138-139.
52. Chauhan, op. cit., pp. 159-60.

and morality'. Viewed in the abstract, this guarantee was of great significance as never before rights had been guaranteed to the citizens of the country in the period of Rana absolutism. The rights guaranteed were more or less the same as found in other constitutions which contain such rights. But this constitution had restricted various political liberties in the interest of public order and morality.

In the Interim Government Act 2007 V.S. there was a Chapter, as already stated, dealing with the Directive Principles of State Policy. Articles 2-11 dealt with the Directive Principles of State Policy as such and the remaining articles 12-20 embodied certain rights. But then the word fundamental was not used. In the case of B.P. Koirala, B.P. Pandey and M.P. Shahi, the Pradhan Nyaya-laya of Nepal had decided that these were justiceable. This prompted the King to have an amendment passed by which the principles and rights stated in this chapter did no longer remain justiceable.

But in the Constitution of 1959 the term Fundamental Rights was reintroduced. Certain rights were again mentioned and along with these Article (9)(1) guaranteed 'the right to move the Sarbochha Adalat (Supreme Court) by appropriate proceedings for the enforcement of the rights conferred by this Part'. But it has been laid down in the Constitution that the rights could be suspended when the King declared a state of emergency under Article 55. Moreover, those rights were not absolute but were hedged in with many restrictions.

The rights mentioned in the Constitution are those of Personal

of any offence except for violation of a law in force at the time of the Commission of the act as an offence, nor would he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.[54] No person could be twice prosecuted and punished for the same offence.[55] No person accused of any offence should be compelled to be a witness against himself.[56] No person who was arrested was to be detained in custody without being informed of the grounds for such arrests nor would he be denied the right to consult, and to be defended by a legal practitioner of his choice. Every person who would be arrested and detained in custody should be produced before the nearest judicial authority within a period of twenty-four hours from such arrest excluding the time necessary for the journey from the place of arrest to the court of judicial authority.[57] The above provisions of this Article did not apply to any person who was an enemy or alien or to any person who was arrested or detained under any law providing for detention.[58] Moreover, no law providing for preventive detention should authorise the detention of a person for more than three months unless an Advisory Board consisting of persons who are judges of the Supreme Court, has reported before the expiration of three months that there is, in its opinion, sufficient cause for such detention. When any person was detained in pursuance of an order made under any law providing for preventive detention, the authority making the order should, as soon as may be, communicate to such person the grounds on which the order had been made and should afford him

54. Ibid. (3).
55. Ibid. (4).
56. Ibid. (5).
57. Art. 3 (7).
58. Art. 3(8) (a-b).

the earliest opportunity of making a representation against the order.[59]

A few general observations may be made about the preventive detention as provided in Art. 3. The first thing to be noticed is that such preventive detention could take place not only in times of war or emergency, but even in normal and peaceful times. The second point is that generally people were not to be kept in preventive detention without taking the opinion of an Advisory Board. The jurisdiction of the Board was compulsory. If it were established that there was no sufficient cause for detaining a person longer than three months, that person must be released. There is a case in this connection. Tulsi Lal Amatya and Sambhu Ram Joshi, two members of Parliament, were arrested when they had participated in a procession which was banned by the Government. The Home Minister made a statement on the subject in the House that it was due to political situation prevailing in the country. The arrest of a member of Parliament had not been placed on the Statute Book. No authority was authorised by Parliament to fix the minimum period for the detention of any class of person, and the judiciary was not given the opportunity to go into the facts.[60]

59. Art. 3(9) and (10).
60. Charge against Tulasi Lal Amatya was that he had participated in a procession which was banned by the government and incited people to indulge in violence. - Kalpana Daily, April 21, 1969. There was no convincing reasons for Sambhu Ram's arrest, Minister making a statement on the subject in the House, and that it was due to the political situation prevailing in the country- Nepal Digest, Regmi Research Institute, June 29, and July 5, 1960. The arrest of a member of Parliament had not been placed on the Statute Book. The Privilege Bill was however adopted later on in April 1960- S.D. Muni, "Legislature and Foreign Policy in South Asia: The Case of Nepal"(Art.), South Asian Studies (Journal, Rajasthan University, Jaipur), Vol. 6, No. 1, January 1971, p. 33. Though this was the comment of the critic but the Bill was not passed at that time.

Article 4 of this Constitution provided that the state would not deny any person equality before law or the equal protection of the laws.[61] This article guarantees equality before law to all persons, whether they are citizens or not. While both the expressions 'equality before the law' and 'equal protection of the laws' aim at establishing equality of legal status for all, there is some differences between the two expressions. The former expression implies a somewhat negative concept, implying the absence of any special privilege in favour of an individual, while the later is a more positive concept implying equality of treatment in equal circumstances. Again the Article provides that there would be no discrimination against any citizen on grounds of religion, sex, race, caste or tribe. Equality before law does not however, mean an absolute equality of men. In fact, this article which guarantees a right to equality to all the citizens also make suitable safeguards in the interest of public order as well as social, political, and economic prosperity of the country.[62] This article guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any service of the Crown. No citizen shall, on grounds only of religion, race, caste, or tribe and sex, be ineligible, or be discriminated against in respect of any employment to an office of the Crown.[63]

Article 5 of the Constitution guaranteed the Right to profess one's own religion. The article says that every citizen shall practice his own religion as handed down from ancient times, subject to current changes.[64] It should not mean that he had no

61. Art. 4 (1).
62. Art. 4 (2).
63. Art. 4 (3).

freedom to change his religion or interpret its tenets as he deemed fit. It only means that every person shall hold religious beliefs and practice them according to his choice, and neither the state nor any other authority shall obstruct him from doing so.

According to Article 6 of the Constitution, 'no person can be deprived of his property save in accordance with law and every citizen is entitled to acquire, hold and dispose of property.[65] The right of property is the oldest one in human history and has always been considered a natural right. Man, 'in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods',[66] and this right is guaranteed in all the codes in history and all the constitutions agree to the right of an individual to hold private property. Every person has the right to acquire, hold and dispose his property but no property could be compulsorily acquired or requisitioned except for a public purpose by the authority without such law made by the legislature and assented to by the King. No such law could be called in question in any court on the ground that the compensation provided by that law was not adequate.

> "The Nepali Constitution appears to have benefitted from the experience of Indian Parliament in so far as the right to property has not been sanctioned by lumping it with other freedoms as is done in the Indian Constitution, and the possibility of invasion on the right is mentioned in the same clause by adding due process provision. Then the general rider of Art. 8(b) is there."[67]

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65. Art. 6 (1-2).
66. Eire Constitution, Art. 43 (1).
67. Narendra Goyal, The King and His Constitution, (Nepal Trading Corporation, New Delhi, 1959), p. 27.

Article 7 was the most important article in this Constitution. According to it, all citizens should have the right to freedom of speech and expression, to assemble without arms, to form associations or unions, to move freely throughout Nepal and to reside in any part of Nepal.[68] It is to be noted that these rights are not absolute, and, consequently, certain limitations were placed on their exercise. The right to freedom of speech and expression, would not effect the operation of any existing law or prevent the state from making any law which imposed reasonable restrictions on the exercise of this right in the interests of security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitenment to an offence.[69] The right to assemble without arms would not affect the operation of any existing law of the country. The government could impose such laws or reasonable restrictions in the interest of public order. As regards the right to form associations or unions, it did not affect the operation of any existing law in so far as it imposed reasonable restrictions in the case with fresh legislation with the same object. As regards the right to move or to reside in any part of Nepal, it did not affect the operation of any existing law in so far as it imposed reasonable restrictions in the interests of general public.

Article 8 of the Constitution clearly defined that the need of restraint of liberty was universally recognized. If the people were given complete and absolute liberty without any social con-

68. Art. 7 (a-d).
69. Art. 8 (2).

trol the result would be ruinous. Law is scheme of social control, as distinct from self-control.[70] Burke and Marx had also expressed their opinion for the limitations of liberty in their philosophy. This Constitution, however, avoided detailed elaboration of the purposes of restriction with reference to each right but authorised legislation to impose restrictions for public good. The second important point was that it did not leave it to the courts to decide whether or not the restrictions were reasonable but transferred that duty to the legislature itself.[71]

Lastly, Art. 9 of this part guaranteed the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights contained in Part II of the Constitution. The Supreme Court had the power to issue directions or orders or Writs including in the nature of Habeas Corpus, Mandamus, Prohition, Quo-Warranto and Certiorari for the enforcement of the fundamental rights. Parliament could by law empower any other court, in addition to the powers conferred on the Supreme Court, to exercise within its jurisdiction all or any of the power exercised by the Supreme Court. The rights guaranteed by this Article, were not to be suspended except in an emergency proclaimed by the King.[72]

70. Willis - Constitutional Law and the U.S., pp. 377-82.
71. Art. 8 (1-3).
72. Art. 9 (1-3).
(i) Dr. K.I. Singh filed a suit in the Supreme Court against the Election Commission and his Majesty's Government in August 1959, demanding a Writ of Mandamus from the Court declaring the elections illegal and unconstitutional. The Court dismissed the case in November, 1959, ending K.I. Singh's efforts to denigrate the results of the elections - Decision No. 75, Kanun Patrika, No. 2016, p. 341; See: Samuktya Prayasa, Weekly, (Kathmandu), November 10, 1959;
(continued on next page)

The King, His Powers and Functions :

The position of the King remained as predominant in the Constitution of 1959 as it was in the Interim Government Act of 1951. The change from the Constitution of 1948 to that of 1951 had been primarily in respect to the position of the King. In the Constitution of 1948 the real power was vested in the Prime Minister, Sree Tin Maharaja. The actual fact was that the Ranas had deprived the King of almost all power and the latter was nothing more than a virtual prisoner of the former. The Constitution of 1948 had not altered the actual relationship existing for about a century between the King and his Prime Minister. In the Constitution of 1951 the picture completely changed and the King was declared to be the sovereign authority.[73]

The Constitution of 1959 in explicit term stated that the King had sovereign power and prerogative.[74] The Constitution was declared to be the fundamental law of Nepal. Yet it was also said that, "Nothing in this Constitution shall effect the law, custom and usage relating to the succession to the throne ..."[75] The

(Continued from previous page)
Joshi and Rose, op. cit., p. 298.
(ii) The most important suit filed was by Mr. Tripurbar Singh, one of the prominent members of the Nepali Congress of Kathmandu Unit, in the Supreme Court for appropriate proceedings for the enforcement of the rights guaranteed and conferred by the Constitution and to release his party President, Mr. B.P. Koirala, from detention after King's take over. But the Supreme Court refused to register the case because according to the provision of the article 55 of the Constitution His Majesty was granted the whole powers of the State machinery. (December 24, 1960). Later on Mr. Singh was arrested under Preventive Detention Act.

73. Royal Proclamation of King Tribhuvan, 18 February, 1951.
74. Preamble, Para III, Constitution of the Kingdom of Nepal.
75. Preliminary, Part I, Art. I (ii).

Constitution was given by the King, therefore naturally, it was on him that the burden had fallen to see that it worked smoothly.

Article 10(2) of the Constitution of the Kingdom of Nepal 1959 clearly specified the powers of his Majesty in three categories: He was empowered to act (a) in his discretion; (b) on the recommendation of a specified person, and (c) on the recommendation of the Cabinet through the Prime Minister. To know exactly when the King would act on the recommendations of the Cabinet, we have just to find out what were the powers left to the discretion of the King and what were these matters where he was to act on the advice of "a specified person than the Cabinet."

The term 'discretionary powers' means 'Liberty to act according to one's judgement'. The word 'discretionary' was used in the Nepalese Constitution for the first time. In this connection to understand the real significance why the term "in the discretion" was introduced we may cite the statement of Sir Ivor Junnings: "Most of the provisions of Part IV contain the more or less standard formulae necessary to bring Cabinet Government into operation. The fact that Nepal is a Kingdom, however, and that no opportunity has yet arisen for the development of conventions, has made necessary a clearer definition of the position of the Crown in relation to the Cabinet and otherwise. It has been thought wise not to use the English term 'advice' because, though familiar enough to those with experience of the British Constitutional system and its offspring both inside and outside the British Commonwealth, it was felt that translated into Nepalese, and read by those who had not had that experience,

it might convey the idea of a discretion. A distinction has, therefore, been drawn between acts done by His Majesty in his 'discretion' particularly those of appointing a Prime Minister and refusing a dissolution of Parliament, and those done 'on the recommendation' of the Cabinet or a responsible Minister. Speaking generally, His Majesty would act on the recommendation of the Cabinet, but in certain cases in which it is customary for a Constitutional monarch to act on the 'advice' of a particular Minister, the 'recommendation' of that Minister has been specified (e.g., the appointment of Cabinet Minister under the Article 18, the appointment of Senators under Article 24, and the grant of pardon etc., under Article 66). The necessary definitions and consequential provisions are contained in Article 70. It would not be easy to go further in the direction of definition without losing flexibility. It is thought, however, that further guidance could be given to Ministers and other servants of the Crown, perhaps by illustrations and examples, by means of something like a 'Manual of Procedure', adding to the Transaction of Business Rules used in most Cabinet System. Provision has been made for that purpose in clause (2) of Article 16.[76] But we cannot overlook the discretionary powers of the King. Prof. Werner Levi has said :

> 'The discretionary power of the King was so extensive that the eventual and final form of Nepal's government will depend upon the use which is made of the Constitution. It would be a pure parliamentary system, or it would be an absolute monarchy .... (The King) can

76. Unpublished report of the Drafting Commission by Sir Ivor Jannings. The Articles 18, 24 and 70 referred by Sir Ivor Jennings are Articles 13, 21 and 10 respectively of the 1959 Constitution. See; Appendix 12.

suspend the Cabinet and rule directly or with the newly appointed ministers, he can prorogue the Parliament, for a certain period or call it for a special sitting, he has a veto over all legislation and constitutional amendments. If the King declares a national emergency for a variety of reasons at his discretion, he has practically dictatorial powers, though he cannot interfere with civil rights."77

Granting of such discretionary powers is contrary to the very essence of the democratic system of government and in normal times may prove dangerous. It is clear from the Article 10(5) of the Constitution :

"If any question arises whether any matter is or is not a matter in respect of which His Majesty may act in his discretion, shall be final, and the validity of anything done by His Majesty shall not be called into question on the ground that he ought or ought not to have acted in his discretion."78

So, even in normal times, the King could exercise his power of discretion over the executive as well as over the legislative.

Article 55 of the Constitution of the Kingdom of Nepal stated that, "If His Majesty in his discretion is satisfied that a grave emergency exists whereby the security or economic life of Nepal, or any part thereof, is threatened by war or external aggression, or by internal disturbance, he may by Proclamation in his discretion : -

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

77. Levi, Werner,"Nepal's New Era"(Art.) Far Eastern Survey, October, 1959.

78. The word 'discretionary' has been used in the following Articles of the Constitution of the Kingdom of Nepal:- Art. 10(5), (6), (7); Art. 11 (2), (4), (5)(b) provided (ii) Art. 11(ii); Art. 13(1); Art. 13(3), (5)(d); Art. 16(2); Art. 17(1)(a); Art. 17(2); Art. 19(1); Art. 21(1); Art. 22(5), (6); Art. 26(2)(a) and (b); Art. 32(1); Art. 42(2) and 2(b); Art. 55; Art. 56; Art. 57 (1 and 2) and

(b) assume to himself all or any of the powers vested in or exercisable by Parliament or any other governmental body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or part the operation or any provision of this Constitution: Provided that nothing in this clause shall authorise His Majesty to assume to himself any of the powers vested in or exerciseable by the Supreme Court or to suspend, either in whole or in part, the provisions of Part IV of this Constitution.

Such energency normally would end after twleve months but could be renewed "by a further proclamation, and so forth until His Majesty is satisfied that grave emergency no longer exists." In Nepal thus the period of emergency could be idenfinitely prolonged.[79] The Constitution-makers accepted the principle that the Constitution should provide such powers to the King without the approval of the Parliament. "The Emergency powers granted to the head of the state were more extensive than is normal in democratic constitutions, but those provisions were widely accepted as necessary, given Nepal's political instability."[80]

We seem to agree with the view of Narendra Goyal, who has stated:

> "The powers granted to the King in this article are very wide, and the wider the powers, the more likely

79. In the Indian Constitution Arts. 352 and 360.
80. Rose and Fisher, op. cit., p. 51.

> the danger that they may be abused. We know from history that heads of States often seize unto themselves even the powers that are not permissible to them under the Constitution, on the pertext of national emergencies. Therefore, this provision can constitute a real threat to the Nepalese democracy."81

Jennings in his note had stated :

> "The laws of Nepal at present make no provision for a Regency or a Council of Regency in the event of the Throne becoming vacant or in the event of the sovereign becoming inacapacitated."

Although the Constitution makes provision for a Regency or a Council of Regency, it is different from the Council of State. Such a Regency or a Council of Regency is to be set up to meet certain exceptional situations.[82]

Firstly, the Council of State could if His Majesty was under the age of 18 set up a Regency or a Council of Regency to function on his behalf.[83] Secondly, if two members of the Council of State, one of whom must be the Prime Minister, had signed a requisition declaring that, in their opinion, His Majesty was unable to perform his duty by reason of mental or bodily infirmity, in such a situation also a Regency or a Council of Regency could be formed to perform the function of the King.[84] But this body had no authority to decide or approve of anything which would be prejudicial to the interest of His Majesty or his successor.[85] Thirdly, His Majesty, under his Red Seal, and by his discretion, could authorise any person or any two or more persons to exercise, during His Majesty's absence from Nepal or for any specified period, any of the functions of His Majesty, but subject to such conditions as the warrant may

81. Goyal, op. cit., p. 85.
82. Art. 11 (5) (ii). See, Appendix 12.
83. Art. 11 (5) (a) (ii).
84. Art. 11 (5).
85. Art. 11 (6).

prescribe. In this Constitution, however, the term 'His Majesty' includes "such person or persons acting within the limits and subject to the conditions prescribed by such warrant."[86]

By tradition, prerogratives, usages and law of the land the King has full authority to amend, modify or repeal the laws relating to the prerogratives and statutes of the Crown Prince, or other members of the royal family and other laws relating to the Palace affairs.

By one of the most important laws which was enacted by King Mahendra in the year 2016 V.S. the title of Prithuladish (Grand Master) was conferred on the Badamaharani. By virtue of this law Sree Panch Badamaharani (Queen of Nepal) was empowered to exercise the powers and prerogratives of the heir-apparent in the case of his being a minor.[87]

Apart from these two kinds of powers mentioned above the King was to act on the recommendation of the Cabinet, conveyed by the Prime Minister or on the recommendation of the Minister of the Crown, as authorised by the Prime Minister, to deal with the matter in question. The real meaning of this article was that the King should act on the recommendation of the Cabinet which was responsible to the Parliament. Since the King could sometimes act in his discretion, a distinction had been made between the actions done by him, to be known as His Majesty's

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86. Art. 11 (ii).
87. Rajutradhika Sambandhi Ain 2015 V.S. (Act relating to the Succession to the Throne).

and the actions done on the advice of the Cabinet. But even here the position of the King was certainly not that merely of a Constitutional Monarch. Art. 10(3) stated:

> 'Except on the ground of urgency, no recommendation in any matter specified by His Majesty shall be made to His Majesty, until His Majesty has been informally consulted, and His Majesty may refer any recommendation for consideration by the Cabinet, whether or not it has already been considered by the Cabinet.'

The Constitution of 1959 had established an efficient monarchical form of government responsive to the wishes of people of Nepal. Article 1(iii) of the Constitution of 1959 clearly defined that His Majesty means the King for the time being reigning, being a Shahi descendant of His Late Majesty King Prithivi Naryan Shah and adherent of Aryan culture and Hindu religion.[88] But the Constitution had also clearly stated that there was no state religion though the King should be a Hindu. The Act of the Crown succession[89] declared that nothing in this Constitution could affect the law, custom and usage relating to the succession to the throne[90] by the descendants of His Majesty Sri Panch Maharajadhiraja. Again the Constitution emphasised that 'all inherent powers relating to matters not provided in this Constitution or any law for the time being in force should continue to vest in His Majesty.'[91] The King had sovereign powers and prerogratives by tradition and custom of the country. He was the source of the Constitution, force behind its operation and had supreme and sovereign power over all the institutions of the State.

88. Part I, Preliminary, Art. 1 (iii).
89. The King had full power to amend or repeal any act of the Crown according to this Act.
90. Ibid., Art. 1(ii). See: Rajutradhikari Sambandhi Ain 2015, Art. 9.

The King thus continued to enjoy enormous powers. He was virtually all-powerful in all spheres. His powers may be broadly classified under "executive", "legislative", "judicial", "emergency" and "miscellaneous".

The executive power was vested in His Majesty and he was empowered to exercise it 'either directly or through ministers or other officers subordinate to him'. Again the Constitution had extended the King's executive power to the execution and maintenance of the Constitution and laws of the country.[92] The King had been specially empowered to act in his discretion or on the recommendation of a specified person, or on the recommendation of the Ministers of the Crown authorised by the Prime Minister[93] as already stated. The King had the exclusive authority for the appointment of all high officials of the government who would hold office during his pleasure. He was empowered to appoint members of the State Council, the Regency Council, the Regent, the Chief Justice and other judges of the Supreme Court and of any other court or tribunal, members of the Public Service Commission, Auditor General, Ambassadors, Commissioners, Baadahakins of districts, members of the Planning Commission and other Commissions. He could, if he deemed necessary make these appointments by exercising his discretionary powers.

He was the Supreme Commander of the Army. He had the power to declare war and conclude peace. The Commander-in-chief and military and Police Officers were to be appointed by him and they could remain in office till his pleasure.[94] The King had exclusive

92. Art. 10(1).
93. Art. 10(2).
94. Sanika Ain 2020, Chapter IV, Art. 11 and 13, and Police Ain 2020 (the Police force officers shall be appointed by HMG/Nepal).

right to make laws relating to the matters of armed forces and police forces.[95] No bill or amendment could be introduced in either of the Houses of Parliament without the recommendation of the King.[96] No titles, honours and decorations could be conferred without the approval of the King and no citizen of Nepal could accept any title, honour or decoration from any foreign state without his approval.[97]

The King had power to choose any person as the Prime Minister of Nepal in his own discretion, who would be able, in his opinion to command a majority in the Pratinidhi Sabha (House of Representatives), either immediately or at the meeting of Parliament after the next general elections. In fact, in the Parliamentary or Cabinet set-up as in U.K. and India, the head of the state is only a titular or nominal head. The real executive power is vested in the Council of Ministers headed by the Prime Minister who is collectively and individually responsible to the legislature. But in Nepal, the Constitution of 1959 granted full authority to the King to select any person who he thought could control the House of Representatives. Other ministers were also appointed by the King on the recommendation of the Prime Minister. If no leader was able to muster a parliamentary majority to secure the office of the Prime Minister, the King could suspend the operation of the government and could assume unto himself the functions of the Prime Minister, the Cabinet and Ministers after consulting the Council of State (Rastra Sabha). Again this Article empowered the King to suspend the provisions of Art. 12-16 with the consent of the Council of

95. Art. 64 (1).
96. Art. 64 (3).
97. Art. 67 (1 and 2).

State in his own discretion.[98] The King was empowered to appoint or to remove the Prime Minister in his own discretion with the consent of the Council of State.[99] So, in the executive field, the King had absolute discretionary power. Article 10(5) (a) had clearly stated that, 'If any question arises whether any matter is or is not a matter in respect of which His Majesty may act in his discretion, the decision of His Majesty shall be final, and the validity of anything done by His Majesty shall not be called in question on the ground that he ought or ought not have acted in his discretion.'

As regards legislative powers, they covered a very wide range. The King had full authority to nominate eighteen members in the Mahasabha (Senate) with the consent of the Prime Minister. The King had the power to summon, prorogue or dissolve the Parliament. The King had the right to address or to send messages to both the Houses or either House of the Parliament. The King had been empowered to cause certain reports and statements to be laid before him, to sanction and introduce certain legislative measures and to issue ordinances in the recess of Parliament. The King was empowered to assent or withheld his assent or return the bill to the house of Parliament in which it had originated for further consideration with the consent of the Council of State if he deemed it necessary in his own discretion. No bill could be declared as law unless and until assented to by the King. The Constitution had limited the powers of the Parliament and supremacy of the legislature had been replaced by that of the Crown. In

98. Art. 17 (1 and 2).
99. Art. 13 (5) (a and b).

financial matters, the King should in respect of every financial year cause to be laid before the House of Representatives (Pratinidhi Sabha) a financial statement showing (a) the estimate of revenue from sources available in the previous financial year; (b) the effect of proposed changes in the law relating to taxation; (c) the sum required to meet charges on the Consolidated Fund; (d) the sum required to meet expenditure to be voted by Parliament; and (e) the sum to be provided by way of loans.[100] In this way we find that the Parliament had not the same supremacy as in other Parliamentary Governments.

In the judicial field, the King had been empowered to appoint the Chief Justice and other judges of the Supreme Court. He had been empowered to grant pardon, reprieve, respite, and to remit, suspend or commute any sentence by a court, tribunal or authority established by law.[101] But the framers of the Constitution had to some extent at least tried to safeguard the independence of the judiciary from the control of the executive. Even in times of emergency the King could not suspend the judiciary. But this was the only limitation on the King's powers.

In normal times the King had been given large powers, as we have already seen. The Constitution of 1959 granted special powers to the King of Nepal in abnormal times, by Articles 55 and 56. These articles deal with the emergency powers of the King, when on account of abnormal circumstances, he would assume special powers to run the Constitution. The Constitution stated that :

100. Art. 46 (1) (a-e).
101. Art. 66.

'emergency would arise if the security or economic life of Nepal or any part thereof was threatened by war or external aggression or by internal disturbances. But there could also be emergency arising out of the breakdown of Constitutional machinery in the state. In a state of such an emergency, the Constitution provided that the King by Proclamation would assume all such powers and functions of Parliament, Government or executive, and could suspend in whole or in part any provision of the Constitution except judiciary if it was deemed necessary by him. According to Article 56, the King, in his discretion, could suspend any provisions of Part III, IV and V of this Constitution with the consent of the Council of State and could make tempo rary arrangements for the government of Nepal. There is a provision that in such a period, if deemed necessary, the King could suspend either House of the Parliament and directly govern the country also.'

By judging all these provisions of the Constitution of 1959, it is clear that the entire government rested on the monarchy. Th King had all these vast powers to be exercised at his discretion granted by the Constitution of the Kingdom of Nepal. Joshi and Rose have rightly observed that :

"The Constitution of 1959 emphasized the inherent powers of the King labelled variously as discretionary, residuary, and emergency, to such extent that it raised question as to whether it was genuinely democratic document. ... At best it amounted to the adoption of a token democratic exterior for the future governments; at worst, it amounted to a calculated measure to create the illusion of political democracy under an essentially authoritarian system."[103]

Chauhan has also said that:

'Moreover, by tradition, usages and law of the land, the King was the ruler of the nation, holder of sovereign power, patron of all state institutions and symbol of national unity and integrity. To him the Constitution was nothing but a token of his pleasure to the people, and being so, he could revoke or reverse the Constitution at his displeasure or discretion and could rule the country in the way he liked."[104]

102. Art. 56 (1)(a).
103. Joshi and Rose, op. cit., pp. 291-92.
104. Chauhan, op. cit., p. 113.

Rastriya Parishad (Council of State) :

Before we take up the Cabinet we find that a body known as the Rastriya Parishad (Council of State), somewhat similar to the Privy Council of England was also created. The members of this Council consisted of the King and the President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives, the Ministers of the Crown for the time being as ex-officio members, persons who have held office as Ministers, and such other persons as His Majesty in his discretion might appoint.[105] A meeting of the Council of State was to be summoned by His Majesty's command and was to be presided over by His Majesty if he was present.[106] But if His Majesty had died, abdicated or was succeeded by a minor or if he was not physically or mentally fit, a meeting of the Council was to be summoned by the Secretary and was to be presided over by such person as the Council of State would by resolution in the meeting decide. In that case the Council should order proclamation of the accession of His Majesty's successor in accordance with the law, custom and usage of Nepal, and if His Majesty was under the age of eighteen, it would make such arrangements for a Regency or a Council of Regency as the Council of State, subject to any act decided. Two members of the Council of State, one of whom must be the Prime Minister, if there be any, had signed a requisition declaring that, 'in their opinion, His Majesty is unable, by reason of mental or bodily infirmity, to command the summoning of a meeting, the Council of State could make arrangements for Regency or a Council of Regency

105. Art. 11 (1) (a-d).
106. Art. 11 (4).

to assume the Royal functions. But if the King died or abdicated or gave notice to the Council of State acting in His discretion that he were able to resume the Royal functions, then the Regency Council would be dissolved.[107]

The laws of Nepal till that time had made no provision for a Regency or a Council of Regency in the event of the throne falling vacant or in the event of the sovereign becoming incapacitated. To meet this need, provision was made in Article 11, Clause 5(a) (i and ii) and (b) (i and ii) for setting out of a Council of State. That Council had no other executive functions. "In most mature democracies", wrote Jennings in his note, "there are conventions permitting the monarch to consult "elder statesmen" and the presiding officers of the legislature etc. The absence of such conventions in Nepal made it desirable to provide for a formal method consultation, and the Council of State has been so composed to meet this need. Apart from the executive functions mentioned above, however, the functions of the Council of State will be purely advisory."[108]

The Cabinet (Mantri Mandal) :

In a Parliamentary Constitution, the head of the State has no option but to call the leader of the majority party in the Parliament and to ask him to form the ministry. The Cabinet stands in close relationship with the Parliament and is collectively and

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107. Art. 11 (5) (a and b).
108. See, Jennings Explanatory Memorandum of the Draft Constitution of the Kingdom of Nepal.Appendix 12.

individually responsible to the legislature. The Cabinet can function till it enjoys the confidence of the legislature. The Cabinet system represents the idea of homogeneity, solidarity, and common loyality to the Chief.

The Council of Ministers we found also in the constitutions of 1948 and 1951. But in the Rana Constitution of 1948 it was responsible to the Prime Minister, Sree Tin Maharaja, and in the Interim Constitution of 1951 to the King, but not to the legislature in either of these constitutions.

The word "Cabinet" did neither occur in the 1948 Constitution nor in the Interim Government Act of 1951. But in the letter by the VI Amendment Provision for a Cabinet was made.[109] But the Constitution of 1959 expressly stated that, 'There shall be a Cabinet consisting of the Prime Minister, who shall be head of the Cabinet, and such number of other Ministers of the Crown not exceeding fourteen, who shall be appointed by His Majesty on the recommendation of the Prime Minister.'[110] The Cabinet was charged with the general direction and control of the Government of Nepal and was to be collectively responsible to the Pratinidhi Sabha (House of Representatives).[111]

The Prime Minister was to provide the list of his Cabinet colleagues, who were then to be appointed by the King. The Constitution made it clear that in this matter the King had no choice. Among the Cabinet Ministers not less than two were to be taken from the Mahasabha (Senate). In the same way, ten Assistant

109. Nepal Gazette, Vol. 9, No. Extraordinary issue, 3 Jyestha 12, 2016, VS.
110. Art. 12(1).
111. Art. 12(2).

Ministers (not members of the Cabinet) were to be appointed by the King on the recommendation of the Prime Minister. And, at least, two of the Assistant Ministers were to be the members of the Senate.[112] It was provided that a minister would cease to hold his office if 'His Majesty on the recommendation of the Prime Minister dispenses with his service.'[113] But it was prescribed that the King could remove the Cabinet Ministers in his discretion if he was satisfied after consulting the Council of State, that government has lost the confidence of the House of Representatives or that it had persisted in acting contrary to the provisions of this Constitution. The Ministers were collectively and individually responsible to the King and the Prime Minister. But the Cabinet, as a body, was solely responsible to the House of Representatives.[114] A Minister of the Crown would be in charge of such departments of government as the Prime Minister, after consultation with the King might assign to him and would be responsible to the King and the Cabinet for the administration of such department.[115]

The Ministers were obviously responsible to the Parliament for whatever was done in their departments. The members of Parliament had the right to put questions and supplementary questions to them. The Parliament had the right to move and pass vote of no-confidence or vote of censure. The members could reject the

112. Art. 14 (1 and 3).
113. Art. 13 (6)(d).
114. Art. 12 (2).
115. Art. 13 (4). Manual of Regulations of 1956 (governed the relation between the King and the Cabinet about personnel organization and management, promotion, transfer, dismissal of officers of Gazetted rank).

budget or any other legislation put before the House by the Ministers. They could move for token cuts in the salaries and allowances of the Ministers and thereby indicate that the Ministers did not enjoy the confidence of the House. By all these methods, the Ministers could be made responsible to the Legislature. Article 12(2) clearly indicated that the Cabinet Ministers were collectively and individually responsible to the House of Representatives and not to the Senate. If one Minister was defeated, all Ministers were bound to resign because it showed a lack of faith in the Cabinet as a whole. When a ministry was out-voted in the House of Representatives, it was the duty of the King to act in his discretion with the consent of the Council of State to make another arrangement to conduct the business of the government. The Cabinet could request the King to dissolve the House of Representatives but it depended on the King's discretion to accept or reject the recommendation of the Cabinet.[116]

The Prime Minister of Nepal

The Prime Minister is the dominating personality in the Parliamentary system of government. Though he is appointed by the head of the state, the discretion of the latter is limited only the leader of the majority party in the popular house has to be summoned. In fact, such is his position now that it is being said, that Cabinet system should rightly be called the Prime Ministerial system of government.

According to the Constitution of 1959, the King in his

116. Art. 26 (2)(a).

discretion, would appoint a person as his Prime Minister who commanded a majority in the House of Representatives. But there was a provision in the Constitution that if the King in his discretion was satisfied that no such person was able to command majority in the House of Representatives, he could appoint a person as Prime Minister who was not a member of that House. But a Prime Minister, who for a period of four consecutive months was not a member of either House of Parliament was to cease to be the Prime Minister at the expiration of that period.[117] Again the same article stated that 'nothing in this clause shall prevent His Majesty in his discretion from again appointing as Prime Minister a person who ceased to hold office in accordance with this clause.'[118] His guess might be right or wrong, or the person selected by him to form the ministry might have failed in his attempt to do so, but the fact remains that the initiative in this case rested with the King.

"In such case," as Gupta says, "the Prime Minister appointed by him was required to become a member of either House within a period of four months. This involved two pertinent questions -- first, what would happen if such a person failed to become a member within the fixed period? Should the King try another person or impose his direct rule? Secondly, granting that such a person fulfilled the above requirement, could that automatically assure him the support of the majority in the Pratinidhi Sabha? If not, could the King retain him in office in violation of the rules of Cabinet Government? These questions were left unanswered by the Constitution.[119]

117. Art. 13 (3).
118. Art. 13 (5)(d).
119. Gupta, op. cit., pp. 136-37.

If the King reappointed such a person to the post of the Prime Minister who had resigned, as he was unable to get elected to the House of Representatives within a period of four consecutive months during his period of Prime Ministership or, had not been able to obtain the confidence of the House, in such a case too, "the Prime Minister appointed by him will have to seek the confidence of the House under Sec. (5)(c). In case of his failure, the King can take recourse to Art. 17 of the Constitution."[120]

After reviewing the position of the Cabinet headed by the Prime Minister in the Constitution of 1959, one can accept the conclusion that "the Constitution had provided for a peculiar dyarchy having two loci of power, the one in the King, whose action was unaccountable to the Government or to any court of law, and the other in the Government which had to be accountable to the electorate for its own and the King's policies. That was not all. The Constitution also demanded that the Prime Minister should become accomodating with and subservient to the King, and give proof of absolute loyality to him if he wanted to continue in his position. It was hard to imagine how a Prime Minister of strong personality, having self-respect and legislative majority, conscious of his leadership in the Government and among the people, would remain subordinated to the executive dominance of the King under whose hands he was virtually pawned and relegated to political insignificance. Thus his role undermined and totally eclipsed, functioning as a subordinate officer, at best as an exalted civil servant, the Prime Minister had to act always upon the orders from and under coercion of the King and to serve as a

120. Goyal, op. cit., p. 46.

shield for monarchical absolutism. It was doubtful whether a stable basis of mutual co-operation between them could be evolved to facilitate accommodation with each other without straining their relationships."[121]

The Prime Minister should be a person sure of the support of the lower House as he was responsible collectively and individually with his Cabinet[122] to it. The Prime Minister was the leader of the Cabinet. He had to be very particular about its composition so that the idea of political homogenity, solidarity, and common loyalty was not put at stake.[123] The Prime Minister had also to take into account the sentiments of the party in opposition.

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121. Baral, op. cit., p. 199.
122. The word Cabinet was used in Nepal for the first time for the ministry formed by Mr. B.P. Koirala on May, 26, 1959, In the Constitution of 1959 the word cabinet was used instead of the term Council of Ministers as in the Interim Constitution.
123. Mr. B.P. Koirala was appointed as the Prime Minister by the King acting in his discretion, as he commanded majority in the House of Representatives. Then he selected his Cabinet colleagues and created the post of a Deputy Prime Minister, for which there was no provision in the Constitution. B.P. Koirala announced the list on May 20, 1959, one week before King Mahendra announced it officially. The Constitution of the Kingdom of Nepal was operated officially on July 13, 1959 on the birth date of King Tribhuban.
See: Nepal Gazette, Vol. 9, Extraordinary Issue (Royal Proclamation of King Mahendra).
Mr. B.P. Koirala added two Ministers and two Assistant Ministers in accordance with Art. 13(2) and 14(1) of the Constitution of the Kingdom of Nepal from the Senate.
Then after sometimes, in the middle of July 1960 re-shuffled his Cabinet. Dr. Tulsi Giri who was the Foreign Minister was shifted to the Development Ministry. But after sometime he resigned as he did not like this change in his portfolio.

The Prime Minister was the leader of his party and he was the leader of the Parliament, i.e., of the House of Representatives. It was he who prepared and delivered important speeches in the House and spoke on all important measures and problems on behalf of the Government. He represented the Cabinet in all political battles in the House.[124] He had to study every bill introduced in the House and had to take a special interest in the bill that was introduced by the Cabinet members. He could suggest amendments in bills and could compel the House to accept his suggestions on account of his majority in the House.

It was the duty of the Prime Minister to communicate to His Majesty the agenda, the decisions of the Cabinet and any proposals for legislation or important executive action which had been approved without reference to the Cabinet and to furnish such other information relating to the conduct of government business as His Majesty in his discretion may require.[125] The King

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124. The Koirala Cabinet had to face much opporition, in both the Houses of the Parliament, in respect of its policy in the internal as well as the external fields. For example, in internal policy the Land Reform Bill, attempt to modernize the legal system laws relating to income tax etc., and matters connected with Development Projects was opposed. In the realm of foreign policy the revision of the Indo-Nepal Trade Treaty of 1950, Gandak River Project Agreement, its dealing of the Mustang Border Area incident, all were criticized by the opposition.

125. In the beginning there was good understanding and relations between the King and the Prime Minister. King's intension was to give a free hand to the new Cabinet. Prime Minister also used to inform the King about all the matters of the State and the business of the government. Prime Minister B.P. Koirala reserved for himself the right to report to the King and other members of the Cabinet could seek an audience with the King only with the permission of the Prime Minister. But from August 1960 when the King began a series of interviews with the members of the Cabinet asking them to submit the detailed report of the business of the government up till the and demanded information on the progress of the government's activities and (with the opposition) started hob-nobbing with the opposition. The attitude of Mr. Koirala changed and the rift began between the King and Mr. Koirala.

was to frame the rules for the conduct the business of the government.[126] The Prime Minister must keep the King informed. Though executive authority was vested in His Majesty, the general direction and control of administration was vested in a Cabinet responsible to Parliament. Because the Parliamentary system was a new in Nepal, and no guidance could be sought from past example, the changing circumstances led to strained relations between the King and the Prime Minister.

Composition and Powers of Parliament of Nepal : (Sansad)

In the Constitution of 1948, provision was made for a Parliament. However, this body was more formal than real. In the Constitution of 1951, in place of a Parliament, an Advisory Assembly was contemplated. But this Advisory Assembly did not possess any real power. But the Constitution of the Kingdom of Nepal 1959 had made provision for a Parliament.

This Constitution of 1959 established a Parliament (Sansad) consisting of His Majesty and two Houses called the Mahasabha (Senate) and the Pratinidhi Sabha (House of Representatives).[127] The Senate was the upper House of the Nepalese Parliament. It consisted of 36 members of whom 18 were elected by the House of Representatives on the principles of proportional representation by single transferable vote for a period of six years and the remaining 18 members were to be nominated by the King in his discretion for a period of six years.[128] No one could be a member

126. Art. 16 (2).
127. Art. 18 (1).
128. Art. 19 (1-2).

of the Senate unless he was at least 30 years old. It was a permanent body and one-thirds of its members were to retire after every second year.[129] Vacancies were to be filled by election or by nomination by the King. If a casual vacancy occurred such a vacancy should be filled up either by nomination or election, as the case may be, for the remaining period of that vacancy.[130]

The House of Representatives was the lower House of the Nepalese Parliament. It was a representative body consisting of 109 members directly elected by adult sufferage from single member constituencies for a period of five years.[131] To be a member of either House of Parliament, a person must be a citizen of Nepal. To be a Senator he should be not less than thirty years of age and in case of the House of Representatives, not less than twenty-five years of age. No one who was in the service of His Majesty's Government and members of the Public Service Commission or the Election Commission, could be members of the Parliament.[132]

The seat of a member of either House of Parliament could become vacant by his death, or by resignation or by disqualification by Article 23 or by his absence for a continuous period of three months, and in the case of a Senator upon the termination of period of office and in case of a member of the House of Representatives upon a dissolution of the house etc.[133]

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129. Art. 19 (1).
130. Art. 19 (3-5).
131. Art. 22. See: Final Result of the General Election, Election Commission's Report. Appendix 15.
132. Art. 23 (1-2). But Ministers, Assistant Ministers and Presiding Officers of both the Houses were exempted.
133. Art. 23 (1-2) and Art. 24 (1,2).

The Senate was as soon as it could, to elect two Senators to be respectively its Adhyaksha (President) and the Upadhyakasha (Deputy President), to preside at its meetings. Whenever the office of the President or Deputy President would fall vacant, the Senate must, at its first meeting after the occurrance of the vacancy, elect a Senator to fill the vacancy.[134] In the absence of the President, the Deputy President was to preside over the meetings and conduct the business of the House, but if both of them were absent, a Senator was to be elected by the Senate for that meeting to conduct the business of the House.[135]

The House of Representatives similarly was to elect as the Sabhamukha (Speaker) a person who was not a member of that House and it was provided that, if a member of the House was elected, his seat would become vacant.[136] The provision of this chapter enabled the House of Representatives to elect as a Speaker, a person who was not a member of that House. This arrangement was copied from the Constitution of Ghana of that time. There were two reasons. First, it could be difficult to find among 109 members of the House, a member who had such knowledge of Parliamentary procedure that he could easily exercise the responsible functions of a speaker. Secondly, if a member of the House was elected, he could not work effectively both as an impartial Speaker and as a political representative of his constituents. The British convention could not be adopted, therefore it seemed better to follow the practice as it prevailed in Ghana.[137]

The Upa Sabhamukha (Deputy Speaker) was to be elected by

134. Art. 28 (1-2).
135. Ibid. (3).
136. Art. 29 (1-3).
137. Opinion expressed by Sir Ivor Jennings in his draft report.

the House of Representative from among its members. Whenever the office of the speaker or Deputy speaker would fall vacant, the House was as soon as possible after the occurrance of the vacancy, to elect a person to fill the vacancy. The Deputy Speaker was to cease to hold office if he ceased to be a member of that House. In the case of his death or resignation His Majesty was to appoint a person to conduct the business of the House.[138]

In the Constitutions of 1948 and 1951, by provisions and acts, the privileges of the members of legislature as they were defined, respectively were to be the same as under the India Act of 1935 and the Indian Constitution. Under this constitution the privileges guaranteed were mostly similar to those in other democratic constituions. But most of the privileges were copied from the House of Commons Privilege rules and from the Constitutions of India, Burma and Ceylon. The privileges of the Nepalese Parliament were defined by the Constitution and were like those of the British and Indian Parliaments. The Constitution guaranteed special privileges to the Parliament and its members. Protection was granted to Parliament from the Courts which could not inquire into proceedings of the Parliament. All members of Parliament were protected from courts in respect of their speech or voting inside the House. All members and officers of Parliament, empowered to conduct the business of the House, were protected from interference by courts in exercising their powers. No publication made under the authority of Parliament could be subject of proceedings in any court. Other privileges of the Houses of Parliament and its members could be prescribed by law. So the special privileges of the Parliament

138. Art. 29 (4-6).

and its members and the protection given to its members and the protection given to its conduct and proceedings were considered essential to allow it freedom in its deliberations.[139]

His Majesty could address either House of Parliament or both the Houses jointly and could send messages to either House.[140]

This Constitution conferred on the Parliament "power to make laws for the peace, order and good government of Nepal."[141] It had the power to discuss and criticize all actions of the government. But it was put down specifically that in either House of Parliament no discussion could take place with respect to the conduct of the King and his successors and also with respect to that of the Chief Justice or any Judge of the Supreme Court.[142]

A bill, other than Money Bill, could be introduced in either Houses of Parliament, but a Money Bill could be introduced only in the House of Representatives.[143] A bill, other than a money Bill, which has been passed by one House was to be transmitted to other House for its approval and on being so approved was to be sent for the Royal Assent. But, if a Money Bill had been passed by the House of Representatives and sent to the Senate, at least one month before the end of the session, and if it were not passed by the Senate within one month, it could be submitted for the Royal assent without passing the Senate.[144] In the opinion of

139. Privileges and Rules prescribed after the approval of the Parliament. Nepal Gazette, Vol. 9, No. Extraordinary issue Bhadra 5, 2016 V.S.
140. Art. 32 (1-2).
141. Art. 51.
142. Art. 34 (1-2).
143. Art. 40 (1).
144. Art. 42 (2) and also see (1-5).

Sir Ivor Jennings :

> "The financial procedure of the Government, of India Act, 1935, adopted by India, does not seem to have justified the variations from the traditional system. Pakistan made a partial return, to the United Kingdom system, but it is complicated by relies of the government of India Act. It seemed that a simplified version of the British System would best suit the conditions of Nepal, The essence has been retained without the complications which have resulted from a long constitutional history."145

According to this Constitution, as already said above, Parliament had the power to make laws for the peace, order and good government of Nepal.[146] No tax could be levied except by or under the authority of Law.[147] No bill became an Act unless and until assented to by the King. He had free power to accept or reject the bill which had been passed by the Houses of Parliaments.[148] No bill or amendments relating to the armed forces were to be introduced in either House of Parliament without the recommendation of His Majesty.[149] The Parliament had all authority over the finances of the State. No taxes could be levied and no expenditure could be made without its permission. But the Constitution in Art. 45(2) clearly exempted certain expenditure from the control of the Parliament. These included : (a) His Majesty's Civil List; (b) The remuneration payable to -- (i) The Chief Justice and other Judges of the Supreme Court; (ii) The Members of the Delimitation and Election Commission; and (iii) The Auditor-General; (c) the administrative expenses, including the remuneration payable to officers and servants of the Royal Household, the Supreme Court, the Delimitation and Election Commissions and the Department of

145. Opinion expressed by Sir Ivor Jennings. See: Appendix 12.
146. Art. 52.
147. Art. 44 (1-4).
148. Art. 42 (1-3).
149. Art. 64 (3).

Auditor-General; (d) all debt charges for which His Majesty's Government is liable, including interest, sinking fund charges, the repayment or amortisation of capital, and other expenditure in connection with the rising of loans and the service and redemption of debt on the security of the Consolidated Fund; (e) any sums required to satisfy any judgement, decree or award against His Majesty's Government by any court or tribunal; and (f) any other sums declared by this Constitution or by an Ain to be so charged.[150] The King could issue Ordinances when both the Houses of Parliament were not in session and these were to lapse forty five days after the sitting of the Parliament, if not already withdrawn.[151].

Various committees were set up to conduct the business of both the Houses of the Parliament like that in other countries. These are specified in the Rules and Procedures of the Houses by law.[152]

The Committee system has become an absolute necessity in the legislative procedure of every country because there is an overflow of business in all legislative assemblies of the world; the houses have become unwieldy, and it is impossible to discuss all the details of a bill in the legislature. That is why committees are small in size so that members can discuss the bills carefully.

150. Art. 45 (2) (a-f).
151. Art. 52 (1-2).
152. Rules and Procedures of Mahasabha (Senate) and Pratinidhi Sabha (House of Representatives), Nepal Gazette, Vol. 9, No. Extraordinary Issue.
See: Mahasabha Niyamavali, Part 14 (135-138) and Pratinidhi Sabha Niyamavali 2016 V.S., Part 15 and 16 (Art. 156-59, 164 and 174-77), Nepal Gazette, Vol. 9, Extraordinary Issue, 2016/5/5.

The underlying idea of the Committee system is to save time and gain efficiency. It is the best example of division of labour.

According to Article 39(1) either house of Parliament could form committees according to Rules and Procedures prescribed by the Nepal Gazette No. 9, Special Issue of Bhadra 5, 1016.[153] The Committees are: Select Committee, Finance Committee, Estimate Committee. Except these committees there are special privileges committee, Rule Committee and Selection Committee.[154]

Regarding the amendment of the Constitution, Parliament could amend or repeal any of the provisions of this Constitution by a bill passed by two-thirds majority in both the Houses separately and assented to by the King. It had been provided that "(a) a bill to amend the Constitution shall be so described and shall contain no provisions other than those relating to the amendment of the Constitution; (b) the bill shall be deemed not to have been passed by the House of Representatives and the Senate unless it was supported at its final reading in each House by not less than two-thirds of all the members thereof; (c) the bill shall, when presented for the Royal Assent, have endorsed on it a certificate by the Speaker of the House of Representatives and the President of the Senate that the provisions of this clause have been complied with."

According to this Constitution, Nepal had, a monarchical form of government. Executive authority was vested in the King, but the

153. Except the Select Committee, Finance Committee and the Estimate Committee, other Committees remained on paper only.
154. Art. 53 (1) (a-c).

general direction and control of administration were vested in a Cabinet responsible to Parliament. In Nepal, the Cabinet was responsible to the House of Representatives. So the Cabinet was collectively and individually responsible to the House of Representatives, the popular Chamber of the Nepalese Parliament. The Prime Minister was to be selected by His Majesty and was to be a person who was in his opinion, commanded a majority in the House of Representatives. Other Ministers were to be appointed by His Majesty on the recommendation of his Prime Minister. The Government could remain in office till it had the vote of confidence of the House of Representatives. It is desirable that the Cabinet should be responsible to one House only and clearly this must be the House of Representatives. A system of responsibility to both the Houses could not work without a series of intricate rules or a series of highly developed constitutional conventions. Neither being practicable in Nepal, the House of Representatives should have clear primary and, hence the Senate must not be directly elected body.

The Legislature under this Constitution suffered from three limitations: (a) it could not discuss the conduct of the Royalty; (b) no bill regarding the army and money could be introduced unless recommended by the King; and (c) the King had the veto power which he could use as many times as he wished. In England alone Parliament is without a legal superior or legal competitor. In short Parliament is sovereign. But in Nepal not the Parliament but the King was the sovereign. From the above discussion of the Constitution on legislative matters, it becomes clear that the King was not merely a Royal spectator but a refree who could pass

any decision in his own discretion and against which no appeal could be entertained.

Position and Role of the Judiciary :

In all modern Constitutions judiciary has been assigned an important place. The Constitution of 1959 had provided for the Kingdom of Nepal a judiciary independent of the executive and the King. Judicial Review of legislation was provided for protecting the fundamental rights of the people.

The Constitution of 1948, as we have already discussed, made a substantial modification in the Nepalese judicial system with the purpose to give impartial, cheap and speedy justice as found in other democratic countries. Judiciary was modelled on the ancient Panchayat System. There was a Pradhan Nyayalaya to safeguard the liberty of the people provided by this Constitution, but in actual practice the word of the Prime Minister, Sree Tin Maharaja, was the law and his judgement was final. According to the Interim Government Act of 1951 also, a Pradhan Nyayalaya had been established as an independent, important and impartial body to give cheap and speedy justice. In this Constitution even the Crown's judicial powers had been restricted. In the case of B.P. Koirala, M.B. Shahi and B.P. Pandey, the Pradhan Nyayalaya of Nepal had declared ultra vires the government's order on the basis of the Interim Government of Nepal Act 1951.[155] Annoyed by this judgement the King promulgated a proclamation depriving the

155. Supra, Chap. III, f.n.

High Court of the power to question any executive action. But later on in 1956, by Proclamation, the King established a Sarbochha Adalat (Supreme Court). This was a court of record and was empowered to take action on matters amounting to contempt against itself and to issue writs of Habeas Corpus, Mandamus etc. The Press Note of His Majesty's Government stated:

> "For the establishment of the Rule of law and for the protection of fundamental rights, the Supreme Court has been given predominant place and has been empowered to declare invalid any law which is not consistent with the constitution. The Constitution also contains provisions calculated to protect the independence of judiciary and these provisions cannot be suspended even during times of emergency."[156]

So, in this way an independent judiciary had been established.

The Supreme Court of Nepal was the highest tribunal in the country. It had been given an important place in this Constitution. The Chief Justice of the Supreme Court of Nepal was to be appointed by the King in his discretion after consulting the Prime Minister. Some other judges of the Supreme Court were to be appointed by the King with the consent of the Prime Minister and the Chief Justice of Nepal. Their independence was sought to be secured by the provisions to the effect that they would hold office until they completed the tenure of their office.[157] The Chief Justice and other Judges could be removed from office if they were charged with misbehaviour or incapacity on the report of a Commission appointed by the King.[158] The remuneration, tenure of office and other conditions of service of the Chief

156. Press Note issued by Publicity Department, HMG/Nepal, February 12, 1959.
157. Art. 57 (1-2).
158. Art. 57(4) (a and b) (5).

Justice or other Judges were to be determined by law and conditions of their service could not be varied to their disadvantages during their period of office and their remuneration was charged to the consolidated Fund.[159]

The Supreme Court of Nepal had both Original and Appellate jurisdiction.[160] Besides these powers, the Court had also the power to issue Orders or Writs, including Writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari, for the enforcement of any of the rights conferred by the Constituion.[161]For the establishment of the Rule of Law in the country and for the protection of the Fundamental Rights guaranteed by the Constitution, the Supreme Court had been given a predominant place and had been empowered to declare invalid any law which was not consistent with the objectives of the Constitution.[162] Even when a Proclamation of emergency was in force, the provisions to protect the independence of judiciary could not be suspended.

(III)

The Position of B.P. Koirala's Cabinet

After consultations with the election Commission King Mahendra issued a Proclamation stating that the first general elections in Nepal would be held on 18 February, 1959. The King gave a message to his people on the even of the first elections to the Lower House of the Parliament. In his message King

159. Art. 57(6) Sarvochha Adalat Ain 2013 and Amendment in 2017 V.S., Nepal Gazettee, Voll 10, No. Extraordinary 3.
160. Art. 45 (2)(b).
161. Sarbochha Ain 2013 (1956),
162. Ibid., Section 11, Supra, f.n. 72 (i and ii) and Sec. 9.

Mahendra said that :

> " ... Our Supreme .. quest for the ways and means of advancing democracy, as also of enhancing the happiness and prosperity of our country and countrymen, our country's first General Elections have come to be held. It is our heart's desire that they will be completely impartial and successful ... . We would also like to say this - in these General Elections, all the more momentous, because they are the first of their kind in the history of our country.. The candidates as well as the electorate are all Nepalese people. So it is in the fitness of things that both victory and defeat should be instrumental in contributing to the shining chapter of moral victory in the history of every Nepalese ... ."[163]

The General Elections were held with great enthusiasm, and, on average about 43 per cent of the electorate had turned up to cast votes.[164] The people gave their mandate and the Nepali Congress secured 74 seats out of 109 in the Parliament (Lower House). After 3 months of the General Elections, on May 27, 1959 King Mahendra proclaimed the formation of the government by the Nepali Congressed headed by B.P. Koirala.[165] In his Proclamation he said that, "

> "Whereas, it has deemed desirable to make the provisions of the new Constitution enforceable as early as possible and also to make some interim arrangement till the enforcement of the same, ... it has been found expedient to found Democracy on a more solid basis and to raise the standard of living of the masses and to develop the country within the framework of the law enacted. ..."[166]

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163. Proclamations, op. cit., pp. 136-37.
164. Election Commission's Report, Nirvachana Sandesh, Kathmandu, 2, Ashad, 2016; Nepal Gazette, Vol. 9, No. 4, Baisakha 28, 2016.
See Appendix 15.
165. Proclamations, op. cit., p. 143.
166. Ibid., p. 143.

B.P. Koirala, who was also the President of the Nepali Congress, was the first elected Prime Minister, and he emerged as the most important leader. He had qualities of leadership, which distinguished him from the rest of Nepali politicians. "He was an internationalist in outlook, and had maintained close contact with the developments in other countries of the world through active membership in the socialist international."[167] It is interesting to compare the actual position of Koirala (Prime Minister) with the members of the Cabinet and the members of the Parliament, the part played by the Nepali Congress government to change the pattern of social-economic conditions of the country, relations with the King and the opposition and its ability to face the internal and external situation during this period.

B.P. Koirala was nominated Prime Minister by His Majesty because he was elected the leader of the majority party in the House of Representatives. King Mahendra appointed other Ministers of the Cabinet on the recommendation of the Prime Minister. The Cabinet was constitutád on the basis of broad regional representations of most ethnic groups in Nepal. King Mahendra never interfered in the formation of Koirala's Cabinet. In fact, there was good understanding between the King and Koirala. Koirala in his Primership had reshuffled the Cabinet two times.[168] These reshuffles of portfolios were made firstly when the new Constitution came into force on June 30, 1959,[169] and again on September

167. Joshi and Rose, op. cit., p. 307.
168. See Appendix 17.
169. Nepal Gazette, Royal Proclamation, Vol. 9, No. Special Issue 6.

30, 1960. The Ministers were collectively and individually responsible to the King-in-Council and the House of Representatives. The Prime Minister reserved the exclusive right to make regular approach to and seek support of the King on governmental matters. Other members of the Cabinet could not have audience with the King without the permission of the Prime Minister. "More than any other leader, he seemed to typify the spirit of 1950 revolution through his constant efforts to base the political decision-making outside the royal palace and on the will of the people."[170] B.P. Koirala wanted to take steps for fulfilling the promises made to the voters in the Nepali Congress party manifesto. The King remained aloof from these affairs in the beginning and gave full power to the Cabinet for the smooth working of the government. The King ordered the Royal Palace Secretariat Staff not to take interest or interefere in the political set up.

While formulating its social, political and economic policies, the Nepali Congress drew upon the experience of other countries as well as its own. Nepal was controlled by feudal economy. The Party manifesto of the Nepali Congress said:

> "The crux of Nepal's economic problems arises from feudal relations in land. We can make no headway with out plan for a prosperous Nepal without first introducing agrarian reforms. This matter, therefore, had to be the first priority in the economic programme of the government. Agrarian reforms had to be divided into two parts: (a) those relating to changes in land and (b) those which required better cultivation of land. So far as Birta and Zamandari lands were concerned, there could be no difficulty in nationalisation as due compensation would be paid."[171]

170. Joshi and Rose, op. cit., p. 306.
171. Nepali Congress Draft Manifesto Sixth National Convention Birganj, 1965, p. 16.

When the Nepali Congress formed the government, it laid down the framework of the economic policies of the government in the Parliament for the next five years. The goals were based on the socialistic system: "(i) to increase the national income of the country, (ii) to bring about fundamental changes in agriculture, (iii) to provide adequate social welfare programmes for the people, (iv) to solve the problem of unemployment and (v) to reduce inequalities in income levels and distribution of wealth."[172] The Ranas, landlords (Zamindars) and the neo-traditionalists were not satisfied with this announcement as those who had enjoyed many rights and privileges and claimed them as their traditional rights would now be deprived of them. Though there was much opposition from these elements, Koirala's government was full of determination to implement these plans for the welfare of the people. The implementation of these plans not only shocked the feudal elements but also other political parties who had claimed themselves as progressive and modern in outlook. They did not lag behind to oppose Koirala's reform programmes. These programmes were contrary to the interest of many parties and individuals. These groups, feudals, royalitsts, conservatives and reactionaries were determined to wreck the scheme of reforms. They began to indulge in intrigues and conspiracies and to fill the King's ears with all sorts of things. The King was not quite ambitious at first to seize real power.

There was no doubt that the pattern that 'was offered by King Mahendra was a mixed one'. There was the promise for a

172. Deputy Prime Minister and Finance Minister Suvarna Shamsher's Budget Speech 1959/60, Budget Speech, Kathmandu, p. 4.

Parliamentary government. But where was also the installation of the paraphernalia associated with royalty. The Constitution had provided for a government responsible to the Lower House. But the Cabinet was to act in the name of the King. The Prime Minister was to be nominated by the King, who, though elected as leader by the party, would in the King's opinion command a majority in the lower house. But the King had been given ample powers, including the power to dismiss the Cabinet and to take the government in his own hands. It was very difficult for a person of strong personality having sense of self-respect and enjoying a legislative majority, to be too meek and loyal and to submit unconditionally to the King who wished to restore the monarchical tradition. However, when B.P. Koirala, according to the Constitution, began to function as the head of the government, monarchy began to feel uncomfortable because the party (Nepali Congress) had agreed to parliamentary election which was what the King had not excepted. The Nepali Congress had openly said that

> "Without Crown, a state could survive but not without the people."173

It had explained its position further by saying that

> "we have decided to accept the elections for parliament because we want to transfer the reins of administration from one man's hand to those of people."174

On the other hand, the King wanted to preserve the absolute position and paraphernalia of monarchy by participating in the affairs of the State. Secondly, the King was not satisfied with

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173. Viswabandhu Thapa, "Sri Panch ra Nepali Congress" (Art.), Nepal Pukar, Kathmandu, February 26, 1956.
174. Desaseva Daily, Kathmandu, January 17, 1959.

the reform measures taken by the Congress Government, particularly those of fixing the amount of the Privy Purse, defining the functional jurisdiction of the Royal Palace Secretariat, and control of the Ministers and Secretaries by the Prime Minister. Ministers and Secretaries could not get audience with the King without the permission of the Prime Minister. Thirdly, the prerogatives and privileges of the Royal family to own and use forests were terminated by nationalizing forests, resulting in the curtailment of its income. Therefore, the attitude of the monarch towards the elected government gradually became apathetic, if not hostile. It was clear that the popular government was not going to have the blessing of the royalty.[175] In this way differences started between King Mahendra and B.P. Koirala. The King in his various Proclamations and speeches, accused the Koirala government of inefficiency indirectly.[176] He asked for more and more information on the day-to-day functioning of the Cabinet and began to inferfere in these matters, directly or indirectly, claiming that, 'he wanted not only to remain as the King but was also interested to be active in State affairs.[177] The conflict now reached its climax when the King began to interfere in the state affairs and 'in order to appraise the situation in the country, began a series of interviews with the members of the Cabinet individually and opposition party men, without consulting the Prime Minister'. Later on, the King met with the entire Cabinet on August 6, 1959 and

175. Chauhan, op. cit., p. 115.
176. See: Speeches delivered by His Majesty King Mahendra from Dang to Bake-Bardia, Nepalgunj - Proclamations, op. cit., pp. 163-65; Joshi and Rose, op. cit., p. 378.
177. Extract from a conversation between King Mahendra and B.P. Koirala- Bisheshwar Prasad Koirala, "Rajtantra" (Art.), Tarun, Bulletin No. 4, September 1971 (Varanasi, 1971), p. 24

wanted to know about the government's activities.[178] This shocked Prime Minister Koirala.

The Army, traditionally a conservative element, was reorganised during the Congress Ministry, of course, under the supervision of the King. Yet it was so manipulated by the royalists that the army was afraid of infiltration of Terai Rajputs and Newars in its ranks. This discontent was deliverately tanned though it had no basis. Prime Minister Koirala, obsessed with the idea of his prestige and popularly became critical of his position being weakened by the King and his henchmen. He discussed with the King many controversial matters and loopholes in the Constitution only one day before the take over of December 15, 1960. B.P. Koirala, in an article in the '<u>Tarun</u>' gave the gist of the conversation with the King.

> "On 15th December 1960, one day before the unfortunate step the King too, I had discussion with him. The King was plainly dissatisfied and unhappy with me as a Prime Minister because I always talked to the King as a representative of the people, and not as a servant of the King. This was something the King disliked most intensely. I wanted to enhance the importance of the Parliament over and above that of the Royal Secretariat. The King's anger had another cause also. My Government had arrested Yogi Naraharinath of Gorkhanath sect, on the charge of making an abortive attempt to capture by force a district headquarter of Western Nepal. Yogi Naraharinath had been spreading the canard that the King, was opposed to the Koirala Government, and his anti-government movement had the Royal support. My government was trying to find out the relations of the Yogi with the Palace on the basis of the papers seized from his bag when he was arrested. The investigation by the local authorities pointed towards the possibility of some unbecoming facts concerning the activities of the Palace. The King asked me about the Yogi, and I told him straight away that the Yogi was an enemy of the nation, that he had some unhealthy relations with the Palace and that he had been trying

178. Joshi and Rose, op. cit., p. 382.

> to mislead the people on the basis of secret understanding with the Palace. The King asked me in an uncommonly sharp tone. "Do you have any proof of his relations with the Royal Palace? I said in reply, "Your Majesty, it is being investigated into. The papers captured from his bag certainly create an unsavoury impression of doubt. Onee more I humbly submit to Your Majesty to keep yourself above politics and create faith in the people about your intensions. Your Majesty's suspicious activities have given rise to the notorious rumour that the King and the government have been working contrary to the interest of the Crown and the people. It must be clear to Your Majesty that the Government functions in the name of the King, which means that the Government is your Majesty's Government. It is vitally necessary to maintain this Constitutional character and if arrangements to this effect could not be carried out, the differences must be ironed out on the basis of the working of the Constitutional monarchy as in other parts of the world. Efforts must be made to end this crisis from assuming the character of a constitutional deadlock." The King said: "All right, Mr. Koirala, let us come to an agreement. Either you remain in power and rule as though I did not even exist or let me rule without mentioning that you are the leader of the Parliament, as if you have no existence whatsoever. We both cannot go together. If you so desire, I give my word not to interfere."[179]

Koirala, in this article, also reports a conversation with the King:

> "In a slow manner", Koirala writes, "the King said, 'Mr. Koirala, don't form the impression that I wish to stick to the throne like a leech. If my august father gave democracy to the nation, I on my part can give it a Republic'. To which I replied, "Your Majesty, why limit ourselves to these extremes. On the one hand of holding on to the throne like a leech, and on the other, of giving a Republic. Constitutional monarchy is a golden mean. Why should we not opt for this middle path? In the context of Your Majesty's statement on the granting of democracy by his late Majesty, I just with to remind Your Majesty that the responsibility for honouring the solemen pledges made by him for consolidating democracy has now fallen on Your Majesty's shoulders". The King said, "You ought to know that I am equally anxious for the well-being of my subjects". I then replied "But the people's

179. Koirala, op. cit., p. 24. See: The Presidential Address by Prime Minister Koirala in the Seventh Conference of the Party on April 8, 1960, about the Constitution on the Kingdom of Nepal.

opinion of whose welfare Your Majesty speaks might be different from Your Majesty's view. Therefore, Your Majesty, in my humble opinion, ought to give the people a chance to think for themselves their own welfare and to act accordingly. Your Majesty, I would always vouchsafe for democracy." Bringing the audience to an end, the King remarked: "Whether I am a democratic or not, history alone shall bear witnesses."[180]

Right from the outset of his accession to his father's throne, King Mahendra did not mince matters to let his people know that he meant to reign as well as rule. "In no time his doings made it apparent that the process of political polarization was complete; and that he alone was the source of all power in the country ... King Mahendra started his Royal career with three sharply defined attitudes: (i) contempt for democratic politics; (ii) animosity toward the Nepali Congress (iii) and dislike of India."[181] In 1959 King Mahendra gave the Constitution of the Kingdom of Nepal based on Parliamentary System but his decision to terminate the parliamentary government was swift though it was not wholly unexpected. On a number of occasions in the past he had indicated his displeasure with the elected government, sometimes an explicit manner and sometimes in a thinly veiled manner. The triumph of the Nepali Congress in the election and the formation of its government not on the strength of King's pleasure or support but of the electorate had ended an era in which the King was the sovereign in the real sense of the term and brought in a new phase in Nepalese politics in which the Prime Minister derived his power from the people and not from the King or Royal Palace.

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180. Ibid., p. 23.
181. Bhola Chatterji, A Study of Recent Nepalese Politics, Calcutta, 1967, p. 159.

In a speech addressed to the people of Banke-Bardda in Nepalganj the King had declared:

> "... the fair name of Democracy should never be permitted to be exploited to do evil rather than good to the people. It should be never allowed to create a climate where industries should languish; rights and justice should be difficult of access; bribery and other forms of corruption should be rife; unemployment should increase; the people on the saddle should have all the loaves and fishes; anti-national elements should reap the harvest; etc., and etc., ... Bearing the truth of this in their minds, let all the Nepali people watch their steps in their journey ahead so that I may not be constrained to initiate other actions in discharge of my duties by my country and these are, to maintain the sovereignty of the country; to maintain the national integrity; to improve our relations with other countries; to initiate actions oriented to the public good. ... I would not hesitate to take whatever step that may be necessary and are whatever cost. All I would need in this task would be the unrestricted cooperation of my people, let there be no misunderstanding on this score."182

While on a State visit to the U.S.A., King Mahendra had addressed the National Press Club in Washington and said :

> "The Parliamentary system of Government was really a strenuous process in a society which was deeply embedded in the traditional value system and "the other serious road bloc in the progress of democracy in countries like Nepal is that the age-old social and religious practices do not at all conform to the norms and standards of a modern democracy."183

With the King, who was determined both to reign and rule, and a Prime Minister equally determined to function as the real head of the government, a crisis was bound to arise sooner or later. The signs of such a crisis, as already stated above, and begun to appear just after a few months of the induction of Koirala government. As no solution to this crisis was possible, more so in the absence of a democratic tradition, it was not a

182. Proclamations, op. cit., pp. 163-64.
183. Ibid., p. 185.

difficult task for the King to dismiss the popularly elected Government as well as to dissolve the Parliament.

Causes of the Royal Coup d'etat of 1960 :

Various reasons have been given for the Royal Coup d'etat of 1960. The following may be said to be the most important : (i) The King had calculated that if no party secured a working majority, it would not mean much concession of power on his part for consequent political instability; (ii) the implementation of new plans adopted by Nepali Congress Government had shocked the feudals - the Ranas, the landlords, Zamindars, the Royalists and the new-traditionalists; (iii) the role of the opposition was not rooted in ideology but in personal jealously and rivalry against B.P. Koirala; (iv) the army and the feudal-bureaucrats were supporting the Crown; (v) in the external sphere the governments of India and of People's China were not pleased with the concept of non-alignment between India and China.

But in fact, King Mahendra's intension from the beginning was to directly rule the country. Though Nepali Congress Government had done much for the establishment of democratic institutions under the aegis of constitutional monarchy within a period of eighteen months, the party failed and it failed because of the nation's immaturity.

In the second half of the 20th century, traditional monarchies had to contend with the problems of modernization in countries like Morocco, Iran, Ethopia, Saudi Arabia, Cambodia,

Nepal, Kuwait and Thiland etc. A traditional monarch always tries his best to modernize the country under his own leadership. So the traditional pattern of society does not like egalitarian ideas, wide - ranging agrarian reforms, urbanization and scientific approach to problems.

It has been rightly pointed out that :

> "The question of modernization is bound with the willingness on the part of the monarch to relax his hold on power vested in him. But since he considers himself an inalienable part of the power-structure sponateous liberalization does not seem to be possible. On the one hand, without relaxation reform is not possible and on the other, the monarch feels that without maintaining a strong grip it is impossible to maintain order or accelerate progress."184

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184. With reference to a Book written by Samuel P. Huntington, Political Order in Changing Societies, Chap. "The King's Dilemma", Success Vs Survival (New Haven and London, 1969), pp. 177 and 179.

CHAPTER V

After the dismissal of the Koirala Government, King Mahendra assumed powers under Art. 55 of the Constitution of the Kingdom of Nepal of 1959. In the proclamation the King said :

> "Now, therefore, keeping in view nothing but the good of the country and the people, we have this day, in exercise of the powers conferred on Us by Article 55 of the Constitution, dissolve by this Proclamation the Cabinet alongwith both the Houses of Parliament; and have assumed unto Ourselves the entire administration of the country till such time as may be required for the installation of an alternative arrangement."[1]

Then he made another Proclamation on December 26, announcing the formation of a new Council of Ministers under his own Chairmanship. He stated :

> "The task before us being to foil or counteract the various mischiefs stalking the country to-day and to ensure the democratic system for tomorrow. We have under the circumstances formed a Council of Ministers under Our own Chairmanship composed of the following in their individual capacity for the time being."[2]

In his Proclamation of January 5, 1961 (Poush 22, 2017, V.S.), the monarch clearly outlined his programme and declared

1. Proclamations, Speeches and Messages H.M. King Mahendra, Vol. II, (Department of Publicity, Ministry of Information and Broadcasting, HMG/Nepal, 1967), p. 2; Nepal Gazette, Vol. X, Extraordinary Issue, No. 17, Poush 1, 2017, V.S. (December 15, 1960 A.D.).
2. Ibid., p. 4; Nepal Gazette, Vol. X, No. 35, Poush 12, 2017 V.S. (December 26, 1960). See, Appendix 17.

the banning of political parties in the new set-up. He said:

> "For national development and reconstruction, we have to open up a new spring of power which will remove the centuries old poverty, ignorance and backwardness of the country and which will nourish to maturity and fruitfulness the tree of democracy rooted in our soil and suited in our conditions ..."

Proceeding further the King put great emphasis on the establishment of the Panchayat System and said :

> "Since Panchayats are the basis of democracy and democratic System imposed from the present experience of the country, we have now to build democracy gradually layer by layer from below. It is our aim to associate the people in the administration at all levels and to develop village, town and district Panchayats, with a view to enabling them to take interest in the problem and progress of the country. ..."[3]

All unions and organisations linked with political parties or political ideologies were banned.[4] Commenting on it King Mahendra

3. Ibid., p. 9, Nepal Gazette, Vol. X, No. Extraordinary Issue I, Poush 22, 2017 V.S. (January 5, 1961 A.D.).
Firstly, King Mahendra attacked Parliamentary system itself as a 'clumsy western imposition incompatible with Nepal's trations, history, and objective conditions'. Then he announced, a new 'Nepali' political system that conformed to the spirit of Nepal's traditions and culture. "Nepalism" the term used by one of his new Ministers.- Bhuban Lal Joshi and Leo E. Rose, Democratic Innovations in Nepal : A Case Study of Political Acculturation (Berkeley, 1966), p. 395.
King Mahendra visited different parts of the country to justify his action. To have reliable information about the actual political situation of the country, he appointed Daudahas (Tour Commissions). These were directly responsible to the King and worked as his personal representatives in different Zones, informing him about the actual political situation in the areas visited by them. The main functions of this Commission were stated to be, "... to make the administration and judicial administration of the Kingdom of Nepal less expensive, impartial, expedient and efficient, to further promote development works, to organize Panchayats in every district, to remove the grievances of the innocent, the old, the poor and women by taking action against and punishing oppressors, cheats, liars, exploiters and other persons of bad conduct and to establish a close relationship between the public and His Majesty's Government". Notification of the Home and Local Self-Government Ministry, Nepal Gazette, Vol. 10, Extraordinary Issue No. 25, Falgun 8, 2017 (February 19, 1961).
Again the King formed a Committee "Information and Propaganda Committee", under the Chairmanship of his second brother, Himalaya Bir Bickram Singh Deva.
4. Within a few hours after King's announcement all political

(continued on next page)

said :

> "As political parties may prove obstacles to this task of creating a favourable climate for this new movement for national reconstruction tasks we have by this Proclamation declared for the present illegal and banned all the existing political parties and class organisations affiliated with such parties."5

He criticised the political parties, and especially attacked the Nepali Congress, the government of which he had dissolved.

From the legal point of view the newly formed Council of Ministers had no right to exercise the powers and functions like those of the Cabinet of the Constitution of 1959, because, the King had suspended these Articles in exercise of Article 55, by his Proclamation of December 15, 1960. So, King Mahendra promulgated the 'Nepal Special Arrangement Act 2017 V.S.' (Nepal Visesha Vyabastha Ain 2017), in accordance with the Article 55(4) of the Constitution of 1959. Under this Act, the Executive functions of the State were subordinated to the King. The Council of Ministers was to be formed under the Chairmanship of the King or the King could appoint a member of his Council of Ministers to act as the Chairman in his absence. The executive would function at his direction. The act further stated that

(Continued from previous page)
party offices were closed in the country and political activities suspended. It was not until July 16, 1961, however, that an executive Order banning parties and political organisations was promulgated by the Home Ministry. Nepal Gazette, Vol. II, No. 14, Srawan 2, 2018, Joshi and Rose, Ibid., p. 423.

5. Proclamations, op. cit., p. 9.

the King had the power to look after the general administration of the country at his own discretion or through His Majesty's Government. The legislature was dissolved. So the legislative functions were also to be directed by the King. The King assumed all the powers of the legislature. This Act was in force till King Mahendra promulgated the Constitution of Nepal in 1962.[6]

King Mahendra had already indicated the structural pattern of the Panchayat System, which was to be the future political system. A Committee was formed to study the features of the governmental system in Pakistan, Egypt, Indonesia, Yogoslavia and the Panchayats of India. This new system in Nepal had borrowed features from

(a) the national Guidance System in Egypt and Indonesia;

(b) the Basic Democraties System in Pakistan;

(c) the 'Class Organisation' System in Egypt and Yogosleviya; and

(d) Panchayat Raj as considered by Jaya Prakash Narayan in India and the Panchayat system as operative in several Indian States.[7]

It was evident that King Mahendra seemed to be much fasci-

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6. Nepal Gazette, Vol. 10, Extraordinary Issue No. 22, 29/9/2017. See: Appendix 13.
7. Leo E. Rose, 'Panchayat Raj in Nepal', (Berkeley, 1962). Also see: Joshi and Rose, op. cit., p. 395.

nated by the 'Basic Democracy of Pakistan'.[8] In a joint communique issued at the conclusion of Nepal King's visit to Pakistan on September 1961, it was stated:

> "His Majesty showed keen interest in the philosophy and working of the concept of 'Basic Democracy' as is being evolved in Pakistan ... . They were firm in their convictions that each country should evolve its own system best suited to the conditions prevailing in the country, and to the genius and traditions of its people... "[9]

On February 18, 1961, the King announced the establishment of a new Ministry, called the National Guidance Ministry. In this announcement the King said :

> "With a view to accentuating common and united efforts to work out a plan of targets and goals in various fields of national activity and attaining these goals within the scheduled period, we have this day constituted a new ministry of National Guidance. The principal duty of this new ministry will be to work in the broader interests of the country and to achieve a greater measure of progress and development in all sections of society and among its various classes, to coordinate the rights and interests of the various areas and their people and not to let regional interests of other areas... "

Again, King Mahendra said :

> "This newly set-up ministry will also try to inspire people of every walk and profession including agriculture, the young people of the country and specially

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8. Field Marshall Ayub Khan had introduced the type of democracy that (i) shall be simple to understand, easy to work and cheap to sustain, (ii) it should put to the voter only such questions as he can answer in the light of his own personal knowledge and understanding without external prompting, (iii) it should ensure the effective participation of all citizens in the affairs of the country up to the level of their mental and intellectual calibre, and (iv) it should be able to produce strong and stable governments. See: Field Marshall Mohammad Ayub Khan, "Pakistan Perspective", Foreign Affairs, Vol. 38, July 1960, pp. 547-56.
9. Asian Recorder, 1961, p. 4267.

> students, in all spheres of activity, cultural, social and ideological, to devote themselves to the service of the nation."[10]

This ministry bemame over busy with the work of drafting various acts for the different levels of Panchayats and class organizations and framing rules and regulations for them. Then another work was allocated to this ministry viz., the work of supervising and controlling the various Panchayats.

On the even of Nepal's New Year's Day (April 13, 1962), a swearing-in-cremony of the elected Panchas of the Kathmandu Valley was held.[11] King Mahendra in his speech on the occasion summarised the principles and characters of the Panchayat system. "By beginning the New Year's Day with the Panchayat Day, we have all made a confident advance in the direction of Panchayat Democracy. The Nepalese plant growing from the grass-roots is altogether suited to the Nepalese soil. There is no Nepali who does not understand what Pancha and Panchayat mean. This is no new system for our country. Our country with its numerous hills and mountains and streams and rivers has developed its culture and civilization within the framework of the

10. A National Guidance Ministry Act was formed by the King on 2018/9/3. Upon the completion of the National Panchayat elections in April, 1963, King Mahendra abolished the National Guidance Ministry. A new ministry, Panchayat Ministry was formed and the powers and functions of the National Guidance Ministry were transferred to the new ministry.
    King Mahendra also established of a National Guidance Council under his Chairmanship. Nepal Gazette, Vol. 11, No. Extraordinary Issue No. 30.
11. The different aspects of the Panchayat system were completed before the formal announcement of the Constitution of Nepal on 16 December, 1962.

Panchayat System ..."[12]

Concerning the parliamentary system the King observed: "The parliamentary system of democracy proved unsuitable for us as it proved to be out of tune with the genius of the Nepalese race... ."[13] Justifying the Panchayat System in Nepal he said: "The national outlook of new awakening, so vital to our country, cannot become such a reality under other system as it can become under this system. This system alone makes it possible for all to have direct relations with their respective villages ... . The sensationalism of the general elections of the Parliamentary system of democracy may not be found in this system but it will give the Nepalese people maximum opportunities to take part in the various nation-building tasks."[14]

Short history of Panchayat Organisation After 1951 - 62 :

After the introduction of the democratic set-up in Nepal in 1951, King Tribhuvan Bir Bikram Shah Deva emphasised the need for the establishment of the system of local self-government through Panchayats. Article 5 of the Interim Government Act 1951 stated: "The State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." From 1953 to 1959 many acts were passed relating to the Village Panchayat Organizations.[15] But these acts regu-

12. Proclamations, op. cit., p. 111.
13. Ibid., p. 112.
14. Ibid., p. 112.
15. The Acts were repealed by Gaon Panchayat Niyam 2013 V.S. Gorkhapatra Press, Kathmandu.

lated only the lower levels of the panchayat structure i.e., village panchayat administrative system. After the set-up of the parliamentary system, the Nepali Congress government tried its best to grant more powers to local units.[16] So the Nepalese Parliament approved the 'Nepal Panchayat Bill'. But before the bill could get royal assent, King Mahendra, dissolved the Parliament and dismissed the elected government.

King Mahendra, who already outlined the policy and programme of the government, announced the Panchayat system as a substitute for the Parliamentary system of democracy after his take-over. He said that the ultimate aim of the Panchayat system was to establish a "Partyless Democratic Society", free from all forms of exploitation, not through class struggle but by holding nationalism and the national interest uppermost. So the Panchayat system is a representative form of government in which the administrative structure itself is designed to be responsive to the will of the people.

Constitution Drafting Commission :

On May 8, 1962 (Baisakha 26, 2019 V.S.) a Constitution Drafting Committee was set-up by the King. The draft Constitution would be made to suit the Panchayat System. This Committee was formed with Mr. Rishikesh Shah, the Finance Minister as Chairman, Mr. Shambhu Prasad Gyawali, Mr. Prakash Bahadur K.C., Mrs. Angurbaba Joshi, and Mr. Dambarnarayan Yadav. Mr. Kula

16. A Comprehensive Panchayat Act was enacted in 1956 and the Nepali Congress Government had projected legislation to expand the powers and functions of the Panchayats in 1960.

Shakher Sharma was the member-secretary of the Commission. In the communique it was also mentioned that the Commission had been charged with the responsibility of submitting the draft to His Majesty by June 1, 1962.[17] The first three Constitutions as we have seen, were drafted with the help of foreign advisors. But the Constitution of 1962 was the work of the citizens of Nepal and no foreign advisers were invited by the King.

The Commission drafted the Constitution in a month and submitted it to the King for his final approval. At first the King went through the draft Constitution and sent it to the Council of Ministers for discussion and for suggestions. It is believed that the members of the Council of Ministers had advised him to control the three organs of government so that no misunderstanding or controversy could arise regarding the position of the Crown. The King was to be the fountain-head of all real power for the smooth working of the Panchayat System of government of Nepal. The suggestions given by the Council of Ministers were most favourable to him. It is certain that changes in the draft in the light of these suggestions were made. King Mahendra, with the consent and advice of his Council of Ministers, and by the royal prerogatives invested in him by Constitutional Law, conventions and traditions, promulgated the Constitution of Nepal on December 16, 1962, two years after the imposition of his direct rule. He abrogated the Constitution of the Kingdom of Nepal of 1959. King Mahendra had assured his subjects in a

17. Royal Palace Press Communique : Released from the Royal Palace Press Attache Office, May 8, 1962.
Nepal Gazette, Vol. 12, Extraordinary Issue 2(B), 26 Baisakaha, 2019 V.S. (May 8, 1962).

Royal message that "he would restore the democratic system that would be suitable to the soil of the country." The Constitution of Nepal 1962 came into force on Sunday the 1st Poush of 2019th of the Vickram Sambat (December 16, 1962 A.D.).[18]

The present Constitution has 97 Articles and Six Schedules divided into 20 Parts. Unlike other previous Constitutions of the Kingdom of Nepal or, for that matter, most of the Constitutions of other countries, it does not follow the usual pattern of dividing the main body of the Constitutional document under the three main heads viz., the executive, legislative and judiciary. Rather it deals with various constitutional topics under different heads weaving them into an organic whole.[19]

The Constitution is the fundamental law of the land.[20] It declares that Nepal is an "Independent, indivisible and sovereign monarchical Hindu State,"[21] and "All Nepalese people constitute the nation due to their common aspiration and united by the common bond of allegiance to the Crown."[22]

The Constitution provided a framework for the functioning and growth of the Panchayat System of Democracy. And as such, "it can be looked upon as the sheet-anchor of unbounded prosperity and the compass-needle pointing to a bright future.[23]

18. Proclamations, op. cit., p. 150.
19. Press Note Issued by His Majesty's Government, setting forth the salient features of the Constitution of Nepal 1962, December 16, 1962.
20. The Constitution of Nepal 1962, Part I, Preliminary Art. I
21. Ibid., Art. 3.
22. Ibid., Art. 2.
23. Press Note Issued by His Majesty's Government, December 16, 1967.

After a period of roughly about five years, the Constitution of Nepal 1962 was amended for the first time on January 28, 1967,[24] and some of the changes were of a fundamental nature. The Rising Nepal, a Nepalese Daily stated:

> "The amendments announced last Friday of January, 1967, are clear both with regard to their general purpose and to the absence of any confusion-creating provisions or features. Some of the amendments are undoubtedly of a major nature; these however tend invariably to underscore and high-light the basic tenets of the Panchayat philosophy thereby strengthening the present system rather than representing any breakaway in theme or spirit of the Panchayat way of government. Besides a strengthening of the present system by [redacted] providing of certain new amendments, many of the amendments aim at pragmatic administrative reforms for the functioning of the government of the country ... . Among the major amendments, the most conspicuous perhaps is to be noticed in the Preamble which explicity provides for the establishment of a Partyless Panchayat System of Government."[25]

Again, a weekly Paper, Nepal Sandesh, commented this in its Editorial :

> "It is probably for the first time in the history of the world that so many amendments have been made in the Constitution at one and the same time. In this way, on the basis of the experience gained so far, H.M. the King has deemed it essential to introduce certain amendments in the Nepal Constitution in order to further strengthen the Partyless Panchayat System, to enable people's representatives shoulder greater responsibility by involving them in administration of the country, and to eliminate various obstacles hindering the day-to-day administration."[26]

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24. The amended articles are: in Preamble 'Partyless'; Art. 11 (2) sub-clause (2); Part IV; Art. 23(2) and 23(b) and (c); Art. 25 (1-4); Art. 26; Art. 26(1), Art. 28; Art. 33; Art. 35-36; Art. 37 (sub-clause a-b); Art. 38 (2) sub-clause 2; Art. 41 (2); Art. 41 A; Art. 42 (6); Art. 48 (2); Art. 55 (a); Art. 59; Art. 61 (b) and (c); Art. 67 A-C; Art. 69; Art. 74; Art. 76; Art. 78(1)(c), (2), (3) and (4); Art. 78 A and 78 B; Art. 83 A; Art. 86, 86A, 86B and 86 C.
25. <u>The Rising Nepal</u> Daily (Kathmandu), (Editorial), Vol. II, No. 44, January 29, 1967.
26. <u>Nayasandesh</u> Weekly (Kathmandu), February 3, 1967.

Laudatory opinions were expressed about the newly promulgated Panchayat Constitution by some. King Mahendra said : "The Constitution of Nepal was suitable to the Panchayat System adopted by the country ... ." [27]Dr. Tulsi Giri who was the Chairman of the Council of Ministers and the right-hand man and political adviser of the King described the New Constitution as a 'synthesis of Parliamentary democracy and Communism.'[28] Prof. R.K. Shah, Chairman of the Constitution Drafting Commission found in it, 'a progressive form of democracy with full guarantee of fundamental rights'. He said : 'The Panchayat System cannot grow in an atmosphere of fear and distrust. It presupposes a climate of freedom and trust.'[29] Biswabandhu Thapa, who was one of the ministers of the Crown at that time claimed: 'Panchayat democracy is more democratic than Parliamentary democracy.'[30] S.P. Upadhayay,one of the members of the Koirala Ministry said, Whatever be the type of democracy - Parliamentary or Panchayat - its basic ingredients should be fundamental rights, rule of law and respect of popular will.[31]

Some political scientists however, tried to evaluate the Constitution in the context of Nepalese political development. These views are more balanced. For example, it has been said: "Nepal's Panchayati system in this sense is one of these attempts to find a significant alternative ideology which suits the new

27. Proclamations, op. cit., pp. 69 and 81.
28. Nepal To-day, January 1962.
29. Ibid., p. 2.
30. Ibid., p. 2.
31. Paper read by S.P. Upadhayaya in the Intellectual Conference, 1962.

conditions of the emergent states, it is a limb of the international search for a democracy of a native brand."[32] Bhuban Lal Joshi and Leo E. Rose expressed their opinion about the Constitution in these words, 'Under the 1962 Constitution, Pandhayat constitute the theoretical foundation upon which the entire political superstructure is based.' Again the same authors have said: 'the Panchayat system, as King Mahendra's personal creation, is now treated as sacrosanct and not to be questioned by articulate political elements within Nepal.'[33] Anirudhra Gupta has said, 'a very complex form of political system has started functioning in Nepal.'[34] Leo E. Rose and Margret W. Fisher have said, "The objective of a dynamic, authoritarian, politically active monarchical system which shares power with other levels and institutions of government only on minor, non-essential (that is, non-essential to the Palace) matters has been incorporated as the basic feature of the 1962 Constitution - in effect gaining for the King the position, formerly held by the Rana Prime Minister." The authors go on to say, 'While the 1962 Constitutional infrastructure can scarecely be classified as democratic, neither is it authoritarian in the traditional manner, for it has broadened participation in the political process to some extent.'[35] R.S.

32. Pashupati Shamsher JBR and Mohammad Moshin, The Panchayat A Planned Democracy (typescript), Forum for Social Studies, (Kathmandu, 1967), p. 11.
33. Joshi and Rose, op. cit., pp. 398 and 418.
34. Anirudhra Gupta, Politics in Nepal : A Study of Post-Rana Political Development and Party Politics (Bombay, 1964), p. 225.
35. Leo E. Rose and Margaret W. Fisher, The Politics of Nepal: Presistence and Change in an Asian Monarchy, South Asian Political System (Ithaca and London, 1970), pp. 171-72.

Chauhan expresses his opinion about it: 'Paradoxically, therefore, the new system, designed primarily to strenthen the monarchy and the traditional force behind it, had also to make room for the people's aspirations."[36] Diplomaticus says: "To look for a historical parallel for the present day Panchayat System in Nepal, one need hardly go beyond the 1948 Consitution. What was envisaged in 1948 comes quite close to the post-1960 Panchayat System, especially in respect of its inspiration and its attitutde towards political parties. King Mahendra's denunciation of political parties sounds as a distant echo of what the Rana Prime Minister Maharaja Padma Shamsher had publicly said at the time of the promulgation of the 1948 Constitution ... Even in the early fifties, though a comprehensive Panchayat Act was promulgated, only a few Panchayats were actually set up. But the difference between the Panchayats then and the Panchayats as established in Nepal after 1960 lies in the fact that in the past, they were merely intended as units of local self-government whereas they now from the very foundation of the entire political edifice surmounted with Rashtriya Panchayat (National Panchayat), the new parliament of Nepal."[37] B.N. Schoenfield says: "The new fundamental reflects significant trends in Nepalese political history. It represents a movement away from the traditional parliamentary type of democracy - monarchy in the direction of

36. R.S. Chauhan, The Political Development in Nepal 1960-70 (Conflict between Tradition and Modernity) (New Delhi, 1971), p. 195.
37. Diplomaticus, "Panchayat System in Nepal: Organisation and Working", (Art.), South Asian Studies, (Department of Political Science, University of Jaipur), Bi-annual Journal of South Asia Studies Centre, Vol. 6, No. 2, July 1971, p. 42.

Personal rule. The assumption of power has been justified by the King on the grounds that the existing system has broken down and that there was pressing need to prepare the people for democratic government. Events since 1959 clearly point to an increasingly decisive role of the King in directing the country's destiny. At the juncture, whatever the opposition to the King, it is directed against the means he has adopted rather than against his person or his office. Secondly, the new system represents a decision to experiment with such indigenous political institution as the Panchayat and to abadon western concept of government. Thirdly, the ban on political parties represents an attempt to develop the non-political institution of 'guided democracy' as a type of government."[38]

While the new Constitution was praised by some as establishing a governmental system consonant with the spirit of the Nepalese nation, others did not find in it any special virtue except that it strengthened the power and position of the King. Comments of many newspapers both native and foreign were critical. The Constitution of 1959, in the opinion of almost all critical observers, was a liberal-democratic Constitution as compared to that of 1962. For example, the Times of India said: "The Constitution of 1959 had provided for a Parliamentary democracy within the framework of a Constitutional monarchy. That Constitution was remarkably liberal and in retrospect it does look as if the reforms introduced in 1959 might have had a better chance of survival if the Constitutional evolution in Nepal had been more

38. Benjamin N. Schoenfield, "Nepal's Constitution : Model 1962" Indian Journal of Political Science, Vol. 4, 1962, pp. 335-36.

gradual."[39] Another leading Indian daily, The National Herald, commented, 'The basis of the new constitution is radically different from that of the one which it has suspended. King Mahendra's Constitution is but a stage in the evolution of Nepal. The announcement said that the new constitution would be in keeping with a new system being evolved in the country.'[40] The Hindu, Madras, said: 'The new Constitution does away with the party system of democracy from Nepal.'[41] The Indian Express had expressed the opinion that, 'The present one has many similarities with the Constitution of Padma Shamsher, which also contained provisions for the establishment of Panchayats.'[42] The Samiksha, a leftist weekly (Kathmandu), said that the present constitution did not embody any new political philosophy, denial of the freedom of association and restrictions on the fundamental rights in unhealthy for the political development of Nepal.[43]

Statements and resolutions welcoming the amendment to the Constitution were issued and passed by a number of National Panchayat members and other Class Organisation members and institution and individuals. The then Prime Minister, Surya Bahadur Thapa declared: "The recent amendment to the Constitution was designed chiefly to make the Panchayat system, which is based on the broad principles of democracy, stronger, better organised and more effective. It will ensure greater public participation in the administration."[44]

39. The Times of India (New Delhi), 19 December, 1962.
40. National Herald, (New Delhi), December 18, 1962.
41. The Hindu (Madras), December 19, 1962.
42. Indian Express (New Delhi), January 3, 1963.
43. Samikshya Weekly (Kathmandu), December 20, 1962.
44. Address by the Prime Minister of Nepal, Surya Bahadur Thapa to the Nepal Council of World Affairs, February 17, 1967.

Several Nepalese periodicals and public men also expressed their views on this amendment. The democratic camp daily paper Nepal Times commented : "The amended Constitution had made Class Organisations more important than Panchayats".[45] The Samiksha said : "The amended Constitution had not extended the scope of fundamental rights."[46] Samaj said that, "A National Panchayat member, even if he is a minister, will now loose his position if the Class Organisation to which he belongs expels him ... such cases have occurred in the Nepal Peasants Organisation ... Ministers too may utilize their position to expel their opponents from their respective Class Organisations, and thus from the National Panchayat itself."[47] Again the paper said : "The amendment had adopted a number of democratic practices in that the Council of Ministers would meet under the Chairmanship of the Prime Minister, whose term of office had been prescribed, and that the entire Council of Ministers would be dissolved on the resignation of the Prime Minister ... . These provisions made it clear that His Majesty desires to transfer more powers to the people. They also indicate that His Majesty may completely dissociate himself from the administration at some opportune moment."[48] But a Newari daily, The Nepal Bhasa Patrika, midly criticized the amendment when it said: "The amendment has not made any fundamental change in the Partyless Panchayat system ... . It

45. Nepal Times Daily (Kathmandu), February 5, 1967.
46. Samiksha Weekly (Kathmandu), January 30, 1967.
47. Samaj Daily, Kathmandu, February 3, 1967.
48. Ibid., February 2, 1967.

has not affected the absolute legislative, executive and judicial powers which are vested in His Majesty, since our Constitution unlike the American Constitution is not based on the principles of Separation of Powers ... . The appointment of a Prime Minister does not make the system similar to parliamentary democracy, since he will not be responsible to the National Panchayat.. The principle of the secrecy of the National Panchayat proceedings remains intact ... . Since Zonal Commissioners will be appointed by His Majesty, and will not be directly controlled by the Council of Ministers, they will resemble the State Governors of India."[49] R.K. Shah criticised the amendment and said, "Nepal has had experience of the no-party Panchayat system under "the King's direct leadership" for about a decade. The form in which the system has been advocated by its most vociferous and ardent supporters has had the effect of making the King or the institution he represents, bear all responsibility both for the success and failure of the policies of the successive governments during the Panchayat decade."[50] He further said, "King Mahendra's Panchayat system, though apparently based on an ecological view of the social system was, in practice, a means of exploiting, under the garb of 'tutelary democracy', the age old Nepali tradition of unquestioned obedience to autocratic authority of any kind. Even so, King Mahendra took great caution to avoid the impression that the Panchayat system had, in practice and theory, discarded the basic democratic tenet that power belongs to the people... . All in all, King Mahendra sought to retain intact his position as the traditional custodian of all absolute authority and the

49. Nepal Bhasa Patrika Daily, Kathmandu, January 30, 1968.
50. Rishikesh Shah, "Political Development of Nepal" (Art.) ILR,

source of all legitimizing powers."[51] Leo E. Rose commenting on the present Panchayat system observed, "Indeed, concepts of "functional democracy" have attracted considerable support from many Asian intellectuals recently. However, there are no instances of its successful implementation in Asia as yet, and Nepal would appear to be an unlikely field for its introduction."[52]

THE CONSTITUTION OF NEPAL, 1962

Preamble of the Constitution :

The Constitution of 1962 was said to have been enforced to establish a new kind of democracy in Nepal under the 'dynamic' guidance of the Crown. King Mahendra stated, 'The Nepalese people should understand only two institutions viz., one the monarchy of Nepal and another Panchayats."[53] In this way, it was based on the fundamental idea that the real power of the state was vested in the King of Nepal in accordance with the traditions and customs of the country.

The Preamble of the Constitution stated:

> "I, King Mahendra Bir Bikram Shah Deva, in the exercise of the sovereign powers and prerogatives inherent in US according to the Constitutional Law, custom and usage of Our country and which devolved on Us from Our August Revered Forefathers, do hereby enact and promulgate this Constitution."[54]

51. Ibid., p. 47.
52. Leo E. Rose, "Nepal's Experiment with Traditional Democracy" (Art.), Pacific Affairs, Vol. XXXVI, 1963 (typecopy), p. 9.
53. Proclamations, op. cit., p. 67.
54. Preamble, Para V, The Constitution of Nepal, 1962.

The Preamble also made it clear that the Constitution of Nepal was establishing a governmental system which was different from the western democratic system as that was not suited to the genius of Nepal. Hence it claimed to establish a 'Panchayat System' rooted in the life of the people in general ...But after the amendment of 1967, it was explicitly stated that this Panchayat system was to be a partyless system. The Preamble now said:

> "And Whereas ... We are firmly convinced that such arrangement is possible only through the Partyless Democratic Panchayat System rooted in the life of the people in general and in keeping with the national genius and traditions, and as originating from the very base with the active co-operation of the whole people, and embodying the principles of decentralization."[55]

Three things emerge clear from this Preamble. First, this Constitution was a gift from the King, as were the two earlier Constitutions and it aimed at the betterment of the democratic system under his leadership. Secondly, the Preamble of the Constituion of 1962 (as modified in 1967) clearly indicated that the Partyless Panchayat system creates a single structure, without the control of any political party, based on the dynamic leadership of the King of Nepal. The system embraced the concept of making maximum use of manpower potentially by channelising it into creative activities rather than allowing it to fritter away. Thirdly, the Preamble says that this system alone can achieve the decentralization of political and economic power in tune with Nepalese culture, beliefs and traditions. It is borne out by experience that the real decentralization of power is possible

55. Ibid., Para II.

through a proper development of the Panchayat System. Decentralization of power and authority is considered as one of the fundamentals of a sound democratic process. The system applied by the King in Nepal is basically founded on the theory of decentralization. From the experience of the country, it was decided to build the layers of democracy from bottom upwards. But in practice the process of decentralization has indeed been reversed and there is a marked tendency towards centralization. An Indian observer has remarked:

> "When the Panchayat system was introduced, it was emphasized that decentralization was its main feature. But there had been an unmistakable trend towards increasing centralization and concentration of all power in the hands of the King."[56]

It is, therefore, clear that though the Constitution was silent regarding political parties in the initial stage, the anti-party bias was very much there. It was amply substantiated by the subsequent amendment of the Constitution in 1967, and thus it became Democracy 'loaded with adjective'.[57] The Panchayat Constitution prohibited parties, affirmed decentralization of power, and accepted the total leadership of the King. Therefore, it was an attempt on the part of the proponents of the Panchayat system to "synthesize modern aspirations with the traditional values."

Hostility to political parties could be said to be the outcome of the experience of the past ten years and the King's

56. Kuldip Nayar, "Between the Lines: New Delhi's Dilemma in Nepal" (Art.), The Statesman, (New Delhi), March 7, 1974.
57. Kusum Shrestha, "Ain Parichaya: Sangha Sanstha (Niyantran Garne) Ain 2019", Nayayadut, Vol. 1, No. 4, 1970, p. 49.

conclusion that these parties failed to act as agents of social and political change. But it is also not to be overlooked that the existence of parties would have acted as a constraint on the freedom of action of the King.

Fundamental Duties and Rights :

The Fundamental Duties and Rights of citizens are provided in the Third Part of the Constitution of 1962. One can find there clear exposition of the nature and scope of these rights and duties. Such duties and rights were also mentioned in the earlier constitution of 1948. In the Constitutions of 1951 and 1959 only rights were guaranteed, not duties. Indeed, we can assume that the 1948 Constitution has had a considerable influence upon the King, for the similarities between this document and the 1962 Constitution are too striking to be coincidental.[58] While promulgating the Constitution of 1948 Maharaja Padma Shamsher had said : "You will surely understand that there must be some restrictions on the activities of the people within the limits of the prime necessity of public order and morality. The people have rights as well as obligations and both rights and obligations are to be exercised from the common good.[59] The Constitution of 1948 which had the aim of establishing a partyless Panchayat system required for the smooth working of the system, restrictions on the liberties of the people. It was on this ground that the banning of political parties was justified.

58. Joshi and Rose, op. cit., p. 398.
59. Maharaja Padma Shansher's inaugural Speech, Supra Chapter II, p. 64.

King Mahendra said:

> "As political parties may prove obstacles to the task of creating a favourable climate for this new movement of national reconstruction, we have by this proclamation declared illegal and banned for the present all the existing political parties and class organisations affiliated with such parties ... ."[60]

Criticizing the role of political parties in the country, King Mahendra asserted: "Hence, as these various political parties with their slogans and processions and even the general elections for parliament could not give political stability to our country and as despite the advice and warnings I had given from time to time, the situation because worse, I was in duty bound to take step I took on December 15, 1960 ... ."[61]

Fundamental Duties and Rights are clearly defined and guaranteed in the Constitution of 1962. According to this Constitution, the Fundamental Duties of the Citizens consisted in devotion to the Nation and loyalty to the State and in the exercise of one's right with due regard to law and without infringing upon the right of others.[62] The Panchayat democracy gives more emphasis on 'one's duty and discipline rather than slogans.'[63] In fact, the term "duties" was emphasised in this Chapter because Panchayat democracy postulates the view that only by fulfilling one's duty could one enjoy true freedom.

According to this Constitution, the Fundamental Rights of the citizens are:

- Right to Equality, Right to Freedom, Right against Exile, Right against Exploitation, Right to Religion, Right to Property, and Right to Constitutional Remedies.[64]

60. Proclamations, op. cit., p. 9.
61. Ibid., p. 134.
62. Art. 9 (1-2).

The fundamental rights include equality before law and freedom from discrimination in the application of law on grounds of religion, race, sex, caste or community. It is guaranteed that service shall be open to talent and none shall be discriminated against on any of the fore-going grounds. Life and property of none shall be liable to forfeiture except in accordance with law.

The most important of the fundamental rights, to which the people living in a democratic environment are entitled, are the freedom of speech and publication, right to peaceful assembly without arms and freedom of movement and settlement in any part of the country. All of these are duly incorporated in the Constitution, in addition to freedom of religion and right to property. Religious freedom, however, does not include the right of religrious conversion.

To the list of fundamental rights, the Right against Exile has also been added. This right has been borrowed from the Constitution of Cambodia.

All the fundamental rights, embodied in the Constitution, are justiceable. In other words, if a person feels that his enjoyment or exercise of such rights is curtailed or abrogated, he can seek for constitutional remedies. The Supreme Court is empowered to exercise original jurisdiction over cases arising out of such alleged curtailment or abrogation of fundamental rights.[65]

65. Press Note Issued by His Majesty's Government, Department of Information and Broadcasting, HMG/Nepal, December 15, 1962.

The power of the legislature to regulate the exercise of fundamental rights in the name of public good has been retained. But unlike in the previous constitution, it has been provided in the present Constitution that prior approval of the King would be necessary to initiate such legislation.[66] Though the Constitution guaranteed all these rights for the smooth working of Panchayat democracy, nothing happened in term of political development. By the amendment, freedom to form unions and associations was recognized. But it was also made clear that it did not mean the right to form political parties or associations. Art. 11 (2) (2) laid down :

> "Notwithstanding anything contained in Clause (2), no political party or any other organization, union or association motivated by party politics shall be formed or caused to be formed or run."

In fact, Panchayat democracy did not accept the westernized concept of liberty, freedom and equality. This system has its own definition of rights of the individual. How far can it be practicable for a country without free participation, discussion and criticism to work a system of democracy. In the words of R.K. Shah, the Chairman of the Constitution Drafting Commission of 1962, 'I am sure that without liberty, freedom and equality no democratic institution can flourish.'[67]

Certain fundamental rights, at least as a matter of Constitutional formality, were granted to the people by the Constitution of 1948. Under the Interim Constitution and the Constitution of 1959, the people of Nepal enjoyed in full and without restriction all democratic liberties. The Constitution of 1962 also

66. Art. 90.
67. Speech by R.K. Shah in a public meeting held at Kathmandu, July, 1967.

granted certain fundamental rights but there was no right to form political associations against the ideology or political aims of the partyless Panchayat System. The Constitution of 1962 placed more emphasis on duties rather than on rights as was also done in the 1948 Constitution.

When the Constitution of 1962 came into force Article 11 was silent about the formation of political unions or associations. But the '<u>Sangha Samatha Niyantran Garna Baneko Ain 2019</u>' prohibited the formation of such unions. According to this Act, 'A person, whether he be a member of the Rastriya Panchayat or other levels of Panchayats or an individual, has only the right to organise public meetings with the approval of the Commissioner's Office or other offices related to it'. The same Article further says: "Any social or religious or political organisations or union, which will not hamper the existing system, could be formed or organised with the prior approval of the Zonal Commissioner's Office."[68] But when the Constitution was amended, Art. 11 (2) sub-clause (2) clearly defined that, "No political party or any other organisation, union or association having party motives shall be formed or run." Not only that, any organisation of Class or Professional character can be formed without prior approval of the National Guidance Act 2018 V.S.[69] According to this amendment, fundamental rights were redefined to include freedom to form association or organisations with political party objectives. But 'no ideas in favour of party system could

68. <u>Nepal Gazette</u>, Vol. 12, No. Ex. 1. 44 (B). Lal-Mohar : 2019/12/30. Art. 2-4.
69. National Guidance Act 2018 - <u>Nepal Gazette</u>, Vol. 11, Extra-ordinary Issue No. 32, Poush 13, 2018 V.S.

be propogated or discuss.'[70] In this way, political activity was not allowed. Constitutional and other open means are not available to the people to voice their legitimate grievances and to make political demands.

Commenting on the Fundamental Rights, Nepal Today says:

"There is perhaps a very small advance on the civil liberties front. Freedom of association for non-political purposes is said to have been provided for. What it means is rather unclear. The people now have the right to form, say, a club or a theatre group. This they possibly had even before the liberalization move. Freedom of association becomes meaningful only when men and women are free to form political parties without

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70. Sangha Samstha Niyantran Garn Baneko Ain 2019 V.S. (Organisations and Associations Control Act 1962). - Nepal Gazette, Vol. 12, Extraordinary 44 (B), Poush 30, 2019 V.S.

Shanker Ghimire, Nirmal Lama and Ram Raja Prasad Singh, candidates from the Graduate Constituency for the National Panchayat were arrested by the police on the charge of opposing the Constitution and the Panchayat System. Then these candidates were declared disqualified to contest the elections following their conviction by a Special Court under Section 2(3) of the 1962 Organisations and Associations Control Act.- Gorkhapatra, August 8, 1967; Nepal Press Digest, Vol. XI, No. 17, 1967.

Later on, to defend the Panchayat democracy from the attack of its opponents in the Kingdom, Sangha Samstha Niyantran Garna Baneko Ain 2019 (Samsodhan) 2026 (Organisations and Associations Control (Second Amendment) Act 1969) came into force from 1969. The Act stated: "No person shall establish or instigate the establishment of or direct or instigate the operation of any political party or any group, organisation or association motivated by political party by objectives. No person shall join or instigate others to join any political party or group, organisation or association motivated by political objectives or maintain contacts or instigate others to maintain contacts with it with political motives. No person shall issue statements, sought slogans, hold demonstrations take out processions, organize publicity and broadcasting or act otherwise advocating the establishment of any political party or group, organisation or association motivated by political objectives or instigate others to do so. The violation of the Act is punishable with imprisonment for a term not exceeding three years or with a fine not exceeding Rs 1500 or with both.- Sangha Samstha (Niyantran Garna) Ain lai Samsodhan Garna Baneko Ain 2016, Nepal Gazette, Vol. 19, No. Extraordinary Issue 25, Bhadra 219, 2026 V.S.: See: Chauhan, op. cit., p. 305.

which it is unthinkable for democracy to function."71

About the fundamental rights and restrictions placed there on, R.K. Shah, expressed his opinion in an Article entitled, 'Human Rights and Constitution. He says, "Clause 2(a) of Art. 11 of the amended Constitution of Nepal, which provides that no political organisation or Association with a political party objectives, ... is inconsistent with Article 30 of the Human Rights Charter. Our Constitution has authorised the National Panchayat, not the Supreme Court, to define the term 'Public Interest'. The Constitution therefore consider the legislature to be superior to the Supreme Court'. He, therefore, suggested that the term 'public interest' should not be inserted in the preambles of bills presented to the National Panchayat, so as to enable the Supreme Court to decide whether or not fundamental rights have been infringed by any law. Shah also maintained that in the absence of limitation on the exercise of powers under Public Security Act, provisions relating to personal liberty, mentioned in clause (1) of Art 11 of the Constitution had become politically meaningless. "The exercise of powers under the Public Security Act is in principle inconsistent with Art. 9 of the Human Rights Charter." R.K. Shah continued, "Efforts are being made to create the confusion that the practice of fundamental rights is confined to different tiers of Panchayats and class organisations. In case freedom is not allowed to the citizen to raise his voice with regard to public affairs at public meetings, the higher tiers of Panchayat System, will not only be isolated from the people, but will also become bereft of the democratic spirit. Panchayat democracy can be strengthened only if full

71. "Meaningless" (Editorial), Nepal Today (Calcutta), Vol. 6,

freedom existed at every level of the society."

Ganesh Raj Sharma, an advocate of the Supreme Court of Nepal has remarked:

> "Personal Liberty and democratic freedom continued to depend upon the will of the executive, since the Public Security Act and the Press and Publication Act were still on the Statute Book."

He adds: "Since the government need not explain the reasons for exercising its powers under the laws, the people suffer from a sense of fear and insecurity."

Directive Principles of the Panchayat System :

Part IV of the Constitution of 1962, entitled, 'Objectives and Principles of Social Policy', deals with certain general principles considered basic for the welfare of the people. As the title itself indicates, the Objectives and Principles of Social Policy, embodied in this chapter are in the forms of directives to the government and the various governmental agencies. The Preamble of the Panchayat Constitution proclaims that the all round progress of the Kingdom of Nepal and of the Nepalese people to conduct the government of the country in consonance with the popular will is possible only through

Panchayat system rooted in the life of the people in general. As we have already seen in the Interim Act of 1951, there were also provisions of a similar nature, but there the part of the Act dealing with these principles was entitled as Directive Principles of State Policy.

By the constitutional amendment of 1967, this part was entirely re-written except for the first Article which was left in its original form but for the deletion of a single word. One of the observers of the Nepali Political scene has written:

> "Directive Principles are a distinctive feature of the 1962 Constitution of Nepal borrowed from the 1936 constitution of Republic Spain and that of the Republic of Eire and India. They are not justiceable and enforceable by courts of law but are of some value merely as guidelines for the policy of the state in the economic and social spheres. The Directive Principles of State Policy in the 1962 Constitution of Nepal were initially based on those in the Constitution of Eire. But the 1967 amendment of Nepal's Constitution has sought to cast them vaguely in the Panchayati mould by discarding the concrete and specific elements of the original version."72

Apart from the fact that the Principles laid down in this part are, as the Constitution says, 'for general guidance and are not enforceable by any court; it is also to be noticed that in the amendment of 1967, the specific objectives mentioned in the original Constitution were deliberately kept vague. While in its original form Part IV laid down that the state would follow a policy which would enable its citizens to have equal opportunity and facility to develop their personality, would provide reasonably adequate means of livelihood, would work for equitable distribution of wealth, protection of the health of

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72. Diplomaticus, "Panchayat system in Nepal: Organisation and Working", (Art.), South Asian Studies, Vol. 6, No. 2, July 1971, p. 57.

workers, giving economic security during orphanage, infancy, old age and period of maternity, eridication of social evils and would provide for as early as possible free and compulsory primary education.[73]

Two articles of the Constitution, Article 18 and Article 19 deal with the 'Directive Principles of Panchayat System'. Article 19, as amended, defines the aims and objectives of Directive Principles of Panchayat System as follows:

"The political objective of the Panchayat System shall be to mobilise, to maximum possible extent and on a voluntary basis, the national genius and resources for the setting up a society as envisaged by clause (1) by associating, through gradual decentralisation, the maximum number of representatives of the people at all levels of the administration and by making the general public vigilant and conscious.

The economic objective of the Panchayat System shall be to establish a system that will provide maximum participation of the general public in the economic upliftment of the country as well as encourage private enterprise, and wherein no individual or class is able to exercise undue economic pressure upon another individual or class.

The social objective of the Panchayat System shall be to establish a social life, harmonious and based upon morality, by eliminating the obstacles in the process of mobilising the general public for setting up a society as envisaged by clause (1)."

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73. Directive Principles of Panchayat Policy contains numerous principles and goals of the system. But a few of these above have been carried out half-heartedly into the others

In modern constitutional governments, the framers of the constitution have generally formulated a separate chapter on the Directive Principles of State Policy. The makers of the Constitution of 1962 were also impressed by the Constitutions of the Irish Republic and of India and also by the Interim Government of Nepal Act 2007. The new cult of 'Nepalism' which the King is spreading may help in the promotion of the welfare of the people. The various principles embodied in this Chapter were inspired by the ideal of the welfare state.

Three distinct features mark these principles. First, it commits itself to end all sorts of exploitation whether it be social, political or economic. Secondly, highly oriented to the goal of an exploitation-free society, it seeks to achieve this through class-co-ordination. And thirdly, it is committed to induce maximum participation of the people in administrative and developmentally matters at all levels within its structure. These provisions are an addition to the original Constitution of 1962. Thus progressive measures were taken for the establishment of a socialistic pattern of society with a national outlook.

These principles are not justiceable and enforceable by courts of law but are of some significance serving as guidelines for economic and social policy. But in 1967, when the Constitution was first amended, the original title of Part IV of the Constitution, 'Objectives and Principles of Social Policy', was replaced by 'Directive Principles of the Panchayat System'. The first amendment of the Constitution which calls this Chapter as 'Directive Principles of Panchayat System' sets-up another milestone in enhancing the importance of these

principles by adopting them as the basic principles of the policy of the state as well as that of the government. On this occasion the Press Note issued by His Majesty's Government had said, "The principles laid down in this part are for guidance and they are not enforceable by any court unlike the principles of Right and Duties. The aim shall be to promote the welfare of the people by setting up a democratic, just, dynamic and exploitationless society by harmonising the interests of different classes and professions conceived in a broad national outlook. The objectives are derived from the political, economic and social goals of the Panchayat System.[74] Since the creation of the Constitution of Nepal, there was a serious handicap in the Constitution. The Preamble in its first two lines had declared that the basic principles of the Constitution are (i) welfare of the people and (ii) government in accordance with the will of the people. The second part dealing with democracy has been defined clearly under the Preamble, while the first dealing with welfare issues was nowhere defined or mentioned. Diplomaticus says: "The directive principles of state policy in the 1962 Constitution of Nepal were initially based on those in the Constitution of Eire, but the 1967 amendment of Nepal's Constitution has sought to cast them vaguely in the Panchayati mould by discarding the concrete and specific elements of the original version."[75]

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74. Press Note issued by HMG Nepal, January 1967.
75. Diplomaticus, op. cit., p. 57.

Organisation and functions of the various levels of Panchayats and Class Organisations :

King Mahendra gave a Constitution based on the Panchayat System under his leadership. He claimed: "Panchayats are the basis of democracy and democratic system imposed from above had proved unsuitable." He decided to build the 'Partyless Democratic Panchayat System', 'to fit the soil and climate', based on 'state authority and public approval' and 'by historical necessity', rising pyramidcally, layer upon layer, from the bottom upwards."[76] It was his aim to associate the people in the administration at all levels and to develop village, town and district Panchayats with the view to enabling them to take active interest in national affairs.

From 1951 to 1961, the government took steps to organize village Panchayats and to enable them to function as units of self-government. The Panchayat System of 1948 came to an end after 1951. But King Mahendra declared in the Preamble to the Constitution of 1962 that to conduct government, in accordance with the popular will, was possible 'only through Panchayat System rooted in the life of the people in general.'

The different aspects of the Panchayat system were completed before the formal announcement of the Constitution of 1962. The Village Panchayat Act was already in operation and District Panchayats were being organised. Numerous propagandistic pamphlets were published, and official pronouncements were made which explained the structural pattern of the Panchayat System.

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76 Proclamations, op. cit., pp. 69 and 81

The Panchayat System has four tiers. Part VIII Chapter 1 of the Constitution envisaged the establishment of a comprehensive legislative structure beginning from the Gaon Panchayats (Village Panchayat) or Nagar (City) Panchayats. Then came the Zilla (District) Panchayats, Anchal (Zone) Panchayats[77] and finally the Rashtriya (National) Panchayat at the top. After the first amendment, the Constitution also provided in Part 10 'A' regarding Class and Professional Organisations.[78]

Organization and Functions of the Various Levels of Panchayats:

King Mahendra created the National Guidance Ministry on February 18, 1961,[79] for mobilising efforts to determine the targets and goals in various fields of national life as well as attaining these goals within the scheduled period. This ministry implemented various acts relating to various Panchayat Organisations before the formation of the National Panchayat.

The Constitution recognizes the Village Panchayat and the Town Panchayat[80] as the basic units of Panchayat democracy. There is Village Assembly known as Gaon Sabha. This Assembly is composed of the whole adult population of a given village. Those who are

77. Part 8, Chapter 1, Art. 30-33. But by the amendment of 1967 instead of Anchal Panchayat, in every zone there shall be an Anchal Sabha which will include all the members of the Zilla Panchayats of that zone. The organisation, powers and function of the Anchal Sabha shall be defined by law.
78. Art. 67.
79. Nepal Gazette, Vol. 11, No. Extraordinary Issue 32, Poush. Gorkhapatra, Falgun 8, 2017 (February 18, 1961).
80. Art. 30 (1-3).

twenty-one years of age are qualified to vote, and those reaching twenty-five can be the members of a village Panchayat. The members of a Village Assembly would elect an eleven member Village Panchayat.[81] Pradhan and Upa-Pradhan Panchas were to be elected by the members of the Village Assembly for a period of four years. The election is to be held by secret ballot. For the election of a Village Panchayat (Gaon Panchayat) every Gaon Sabha (Village Assembly) shall be divided into nine wards and every ward shall elect one representative for a term of six years. It is a permanent body, never being dissolved. One-third of the members shall retire every two years.[82]

Unlike the Gaon Panchayat, the town (Nagar) Panchayat has been established. In a city consisting of ten thousands or more His Majesty's Government can establish a City Panchayat. On attaining the age of twenty-one the citizen has the right to vote

81. The procedure for the elections under the Village Panchayat (Election) Rules, which permitted voting by show of hands was strongly criticized. An amendment to the Panchayat Act, dated April 16, 1962, provided for the first Panchayat elections then underway. In 1963, there were altogether 32,220 panchas associated with the country's administration from the regional to the central level. In 1963, there were altogether 3,548 Panchayats. Now there are 3,860 Village Panchayats out of a total of 4200 projected Village Panchayats See: Leo E. Rose, Nepal Experiment with Traditional Democracy, (Art.), Pacific Affairs, Vol. XXXVI, No. 1, 1963; Satish Kumar, "The Panchayat Constitution of Nepal and Its Operation" (Art.), International Studies, Vol. VI, October 1964; L.S. Baral, "The First Panchayat Elections in Nepal, 1962-63: The Emergence of a New Political Generation" (Art.), International Studies, Vol. 12, No. 3, July-September, 1973.
82. With reference to the Village Panchayat Acts of 2018 and other amendments from 2018/10/11; 2018/12/29; 2020/11/16; 2021/8/1; 2022/5/14; 2022/12/10; 2024/4/4; 2024/6/11 and 2026/11/25.

at the Nagar Panchayat election. Membership of the City Panchayat can be from nine to thirty-three depending on the size of the population. These members are elected by secret ballot. This is a permanent body and one-third members retire after every second year. The Pradhan and Upa-Pradhan Panchas shall be elected from among the elected members by a simple majority for a period of four years.[83]

One of the most important factors underlying this organization is that direct elections were restricted to the lowest level of the Panchayats i.e., the Village and City Panchayats. When the Village and City Panchayat Acts were amended in 1970, many improvements were made in the composition, powers and functions of Village and City Panchayats.

The second tier of the Panchayat pyramid is Zilla Sabha[84] (District Assembly). This is composed of the representatives of the Village Panchayats and City Panchayats. The Zilla Sabha elects an executive body called Zilla Panchayat (District Panchayat).[85] This is at the district level. District Assembly comprises one elected representative from every Village Panchayat and one-third of the total elected members of the City Panchayat. District

83. Nagar Panchayat Act came into force from 2019/5/4. But various amendments were made later on in this article from 2019/12/30; 2020/11/16; 2021/8/1; 2022/5/14; 2022/12/10; 2022/12/10; 2014/6/11 and 2026/11/25 Nepal Gazettes.
84. The Kingdom of Nepal has been divided into 75 Development District Panchayats.
85. District Panchayat Act came into force in 2019/8/14. But various amendments were made later on 2019/12/30; 2021/8/1; 2022/5/14; 2024/4/4; 2024/6/11 and 2024/6/11.

Assembly elects an executive committee of eleven members including one Chairman, one Vice-Chairman and nine other members known as Zilla Panchayat (District Panchayat). In the beginning, the Chairman and the Vice-Chairman were to be elected at first, and other nine members, later on. But by the amendment of the act,[86] the executive members shall also be elected simultaneously. The tenure of the offices of the Chairman and the Vice-Chairman is of four years and that of other nine members of six years. One-third members shall retire every second year.

The third tier of the Panchayat System is the Anchal Sabha[87] (Zonal Assembly). The Constitution of 1962 had provided for Anchal Panchayats (Zonal Panchayats), but by the first amendment in 1967, Zonal Panchayats were abolished, although Zonal Assemblies were retained. The Zonal Sabha comprises all members of the Zilla Panchayats of a Zone. Now, the members of Zonal Assembly elect among themselves one Chairman and one Vice-Chairman for a period of four years.

Every Anchal has an Anchal Sabha or Assembly.[88] It is composed of all the members of district Panchayats lying within the area of a particular zone. Though created as a deliberative body, it now remains an electoral college only. These 14 Anchals

86. Zilla Panchayat (Samsodhan) Ain 2024, Until 2 April 1969, the term of office of Chairman, Vice-Chairmen of Village, Town and District Panchayats was two years only - Gorkhapatra, 16, April, 1969.

87. The Kingdom of Nepal has been divided into 14 zones (Anchals) on the recommendation of Decentralization Scheme Committee 2020.
Two amendments were made in this Act. They were 2021/8/1 and 2024/4/4. When it was amended in 2024/4/4 the Zilla Panchayat Act was repealed.

88. The Constitution of Nepal (Amended), 1967, Art. 33.

elect 90 representatives for Rashtriya (National) Panchayat,[89] thus each forming a constituency for the election of a number of members of the National Panchayat.

There is an Anchal Samiti (Zonal Council) presided over by the Anchaladish (Zonal Commissioner)[90] to aid and advise him. After the abolition of Anchal Panchayats it now remains more or less as a co-ordinating body and frequently doubts have been expressed about its justification as 'a part of the Panchayat hierarchy.'[91]

The Anchal Sabha (Zonal Assembly) is a body consisting of all the members of Zilla Panchayats (District Panchayat) in that zone, three members from Women's Organisations, four members from Peasants and Youth Organisations and two members from Labour and ex-servicemen's Organisations. Except the members of the Panchayats and Organisations, four local graduates shall also be represented. Its main function is to give suggestions to the Anchaladish on zonal development matters.

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89. See: Appendix 16(I).
90. There are altogether 14 Anchals (Zones), each headed by an Anchaladish (Commissioner) whose post is constitutional and the appointment is made by His Majesty. At the apex of the pyramid is the Zonal Commissioner who is the 'eyes and ears' of His Majesty the King and to assist him there exist a Zonal Committee. Next in the ladder comes the Assistant Zonal Commissioner who is followed by the Chief District Officer and a large number of other officers.
91. U.N. Sinha , Panchayat Democracy of Nepal in Theory and Practice, (Department of Information, Ministry of Communication, HMG/Nepal, 1972), p. 41.

Organisations and Functions of the Various Levels of Class Organisations :

Prior to the establishment of Partyless Panchayat System there were various political parties. Various Class Organisations were formed under Party-supervision and these Organisations were used to advance their interests. It was natural in a democratic country to form and organize such organisations though they were attacked in Nepal. The Minister for National Guidance criticized the relationship between the political parties and the Class Organisations and also made clear the attitude of the Government towards them:

"During the past several years, political parties used the class organisations to advance their own interests. The political leaders used the different class organisations only to maintain their own leadership, with the result that leaders of the class organisations also soon began exploiting others ... . The present regime, under the leadership of the King, wants to strengthen the various class organisations by arousing public consciousness and by overthrowing the political party burden imposed from above ... . A peasant should be engaged in agricultural pursuits aided by modern scientific equipment, remaining aloof from party politics. The same should be the case with students and other classes as well. Can anything be more important?"[92]

Although the present system is partyless, it became necessary for it also to organize and mobilize the general masses and to draw them to participate in its working. The main function of

92. Speech by Vishwabandhu Thapa, Minister for National Guidance, March 7, 1961. See: Joshi and Rose, op. cit., p. 406.

these organisations was to foster the Panchayat system in Nepal. Keeping this view, King Mahendra said :

> "Though a ban was imposed upon political parties, my Government saw the need for the formation of Class Organisations so that people's creative faculties and organisational propensities might have a free play and accordingly, we have in our midst to-day some representatives as well."[93]

Shortly after the King's announcement, the Ministry of National Guidance decided to establish Class Organisations, of peasants, labourers, women, youth and ex-servicemen. Fifteen members from these organisations are to be sent to the National Panchayat. The National Guidance Ministry issued a set of rules for the formation of a Central Committee of each of the Class Organisations.[94] The National Panchayat Class and Professional Organisation Act was gazetted, regulating elections to the National Panchayat from the Central Committees of the Class Organisations.

The Class Organisations have been established on the same pattern as the Panchayat, therefore these have a four tier structure as we saw earlier in the case of the Panchayats. At the bottom are the Primary Committees from in each village or town Panchayat area. The members of the Primary Committees are

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93. Inaugural Address by King Mahendra at the Conference of Intellectuals representing the different parts of the Kingdom, See: Proclamations, op. cit., p. 136.
94. Nepal Class and Professional Organisation Representative Act came into force on 2019/10/3. But in the initial phase of the system, a strict vigilance was kept on the election of the office bearers and the National Panchayat members from the Class Organisations. It was evident, the elections were strictly held under the supervision and control of the Government and hence the oppositional politics had less chance to enter into them. Till 1970 (2026 V.S.), most of the organisations were unable to form even the Primary Committees. Later on various amendments were made in many of those organisations

elected directly by all the members of each class residing within that area. Above the Primary Committees, are District Councils to which every Primary Committee sends one member and this District Council elects a District Executive Committee consisting of five members. In the third tier comes the Anchal Sangathan, i.e., Zonal Committee and the members of the District Committee are automatically the members of this organisation. This body elects the Chairman and the members of the executive body. The highest tier is the Kendriya Sangathan (Central Organisation). All the members of the Anchal Parishad are automatically the members of the Central Committee. This Committee elects a Chairman for the Central Committee and a Kendriya Parishad, i.e., executive committee. Then these will elect the representatives for the National Panchayat according to the rules and regulations prescribed by the Act on the basis of proportional representation with a single transferable vote system for a period of four years.

Composition, Powers and Functions of the National Panchayat :

The highest tier of the Panchayat system is the Rashtriya Panchayat (National Panchayat). It is the apex of the Panchayat Pyramid. The nature of this House, its composition and functions are defined by the Constitution of Nepal. The National Panchayat is a permanent body comprising of the representatives of the entire population. In the National Panchayat there are altogether one hundred and twenty five members representing almost all important sections of the Society.[95] Ninety members are

95. Art. 34.

elected on territorial basis through the Zonal assemblies, fifteen are elected by Class and Professional Organisations, four from the graduates' constituency and the remaining fifteen percent of the total elected members, i.e., sixteen are nominated by the King.[96] To be a member of the House, a person should be a citizen of Nepal, be of twenty-five years of age, be a member of a Class Organisation or a Professional Organisation, not be a servant of the Crown other than a Minister, a Minister of State and Assistant Minister and must have not been expelled according to article 38(2) of the Constitution,[97] and not have been disqualified under any Act.

The National Panchayat is a unicameral legislative body and meets in camera. It is a prepotual body. One-third members of this body shall retire after every second year. But for the Class and Professional Organisations, Graduates Constituency representatives and King's nominees, this rule does not apply. The tenure of office of these members shall be of four years.[98] The seat of a member shall become vacant in the National Panchayat upon his death, resignation, disqualification under Art. 35, absence for a period of more than three months from its meetings, expiry of his torm of office or on his expulsion under Art. 38(2).[99]

96. See Appendix 16(I)(II); Schedule 4, 5 & 6, Art. 34(2)(a-d).
97. Art. 35(a-f). Art. 38(2) states: "If a Commission consisting of the Chairman of the Rashtriya Panchayat, the Chairman of the Standing Committee of Raj Sabha or any member of that Committee designated by His Majesty and a Judge of the Supreme Court also designated by His Majesty, submits a report with a finding that a member of the Rashtriya Panchayat has not conducted himself in a manner befitting his office, and if the report is approved by his Majesty, such member of the Rashtriya Panchayat shall be deemed to have been expelled and no such expulsion his seat shall automatically became vacant. But a member of the House who has

In a Press Note issued by the Government of Nepal (December 16, 1962) it was stated: "There are certain important provisions of the Constitution in respect of the National Panchayat which are expected to create new ideals and healthy traditions. They are the provisions relating to the privileges and immunities of the National Panchayat. Except on special occasions[100] when, for example, the King is to deliver an address from the Throne, the sittings of the Rashtriya Panchayat or its Committees are not open to the public. The provision, which aims at screening out personal publicity of the members and to foster a habit among the members to abide by a decision once it is taken after full and free discussion, is one of the novel features of the Constitution. This is in keeping with the ideals of the common and indivisible responsibility of the Rashtriya Panchayat as a whole."[101] The privileges of the members of the Rashtriya Panchayat are more or less the same as those enjoyed by the members of the legislative bodies under the 1951 and 1959 Constitutions.[102] The members enjoy full freedom of speech and they are immune from arrest and are not accountable to any court of law for their speech in the assembly. Any infringement of the privileges of the assembly will be treated as its contempt and it will sit in judgement on it.

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100. The Constitution of Nepal provides that it is also open to the public when any distinguished foreign visitor is to address it. The State Visit of the Pakistan President Field Marshall Mohammad Ayub Khan, provided one such occasion.
101. Press Note issued by His Majesty's Government on December 16, 1962 setting forth the salient features of the Constitution of Nepal (1962).
102. Art. 51 (1-7). See: Rules and Procedure of Rashtriya Panchayat 2019 Rashtriya Panchayat Secretariat, Part 21, Art. 118-129.

But on the other hand it has been also provided for in the Constitution that if a member of the House has not conducted himself in a manner befitting his office according to the report of a Commission set up for this purpose consisting of the Chairman of the Rashtriya Panchayat, the Chairman of the Standing Committee of the Raj Sabha or any member of that Committee designated by His Majesty and a Judge of the Supreme Court also designated by His Majesty, and if this report is accepted by His Majesty, he shall cease to be a member of the House.[103]

A Code of Conduct (Achar Samhita) for National Panchayat members was promulgated by the King in accordance with the Constitution and was published on October 26, 1967.

The Code has forbidden the members of the Panchayat to encourage or initiate or display by their deeds or conduct any such things as are opposed to the fundamentals of the system and the Constitution. Secondly, no member of the Rashtriya Panchayat is entitled to indulge in groupism or any other activity that inhibits the development of the Panchayat System. Thirdly, it is obligatory on the part of each and every member to carry out the work outlined in the 'Go Back to Village National Campaign'. Fourthly, the members are debarred from

103. Mr. Ram Raja Prasad Singh was expelled from the membership of the National Panchayat under Art. 38(2) of the Constitution of Nepal. Expulsion of Mr. Singh followed the finding of a Commission that he had not conducted himself in a manner befitting his office. The Commission consisted of the Chief Justice of the Supreme Court of Nepal, the Chairman of the National Panchayat and the Chairman of the Standing Committee of the Raj Sabha. - Nepal Gazette, No. 4, Push 5, 2028 V.S. The decision was made by the Commission on Marga 7, 2028 V.S. - Notice Issued by the National Panchayat Secretariat.

indulging in any activity or deeds as are determental to the principle of consolidating the partyless democratic Panchayat System and activising and coordinating professional and class organisations. Fifthly, the Code prohibits the misuse or use for personal benefit of any public or government property, and directs members not to profit personally by exerting influence of their position or by offering economic, political or other temptations. Sixthly, the members should oppose and bycott any act or activity, happening in their presence, which is detrimental to the panchayat system. Seventhly, the members are forbidden to indulge in any deed or work that may diminish the prestige of the Rashtiriya Panchayat and the Panchayat System. Lastly, if any act of a member is found contrary to anything mentioned in the code, he or she will be deemed to have conducted in a way not befitting his or her status.

Such types of Code of Conduct were promulgated in consultation with Raj Sabha, for members of Central Working Committee of various levels of Panchayats, Class Organisations and also for teachers.[104]

Here we may mention the case of Ram Raja Prasad Singh who was elected to the National Panchayat from the Graduates'

104. Rashtriya Panchayat ka Sadhasya Haroko Acharan Sambandhi Niyam, Nepal Gazette, Vol. 17, No. Special Issue 30; Anchal Zilla, Nagar ra Gaon Tahaka Panchayat Sadasya Haruko Acharan Sambhandi Nyeyam, 2025, Nepal Gazette, Vol. 18, No. 3, Baisakh, 17, 2025; Bargiya Sangathanka Karya Samiti Paheke Anya Tahaka Sadhashya Haruko Acharan Sambhandhi Nyayam Heru 2025, Nepal Gazette, Vol. 18, No. Special Issue 8, Asad 14, 2025; Bargiya Sangathan Kendriya Samiti ka Sadhasya Haruko Acharan Samhita, Nepal Gazette, Vol. 17, No. Special Issue 30, Kartik 7, 2024; Sikshyaka Sambhandi Achran Niyamabali, 2025, November 25, 1967.

Constituency in 1971 and was not permitted to take oath by the Chairman of the House on objection being raised by some members. These members had objected on the ground that Ram Raja Prasad Singh had made speeches and published booklets prejudicial to the Panchayat System. However, most of the members favoured that Ram Raja Prasad Singh be permitted to take the oath and action against him under the Code of Conduct be taken afterwards. But the Chairman of the House supported the objection made by some of the members of the House. Most of the members of the House appealed to the Crown to safeguard their privileges and requested King Mahendra to safeguard the right of an elected Member of the House if he appealed for Royal clemency. Then King Mahendra granted pardon to Ram Raja Prasad Singh under Article 84 of the Constitution, and a letter to this effect was sent to the National Panchayat Chairman. In the letter, the King asked the House, to let Mr. Ram Raja Prasad Singh take the oath of membership and called upon the Panchas to cultivate the habit of speaking boldly in the defence of the system from public platform, so that there would be no repetition of such a state of affairs. The Panchas were also asked to realise and fulfill their duty to prevent any fundamental principle of the partyless Panchayat System from being made a subject of futile controversy.[105] However, it is to be noted that this case does not fall with the purview of Art. 38 (2).

Powers of the National Panchayat :

The Constitution of 1962 has granted mandatory powers in

105. Rising Nepal, Daily, Kathmandu, Vol. VI, No. 253, August 26, 1971.

some measures. The National Panchayat is apt to play a very important part in the working of the Panchayat System. The legislative procedure has been modelled on that of the British Parliament and is almost similar to that of the Advisory Assembly under the Interim Act of 1951 and of the Parliament under the Constitution of 1959.[106]

The National Panchayat can discuss any matter other than the conduct of the Royal Family and the measures adopted by the judges in the exercise of their responsibilities.[107] Any bill shall be introduced in the National Panchayat. Money bills and certain bills require prior approval of the Crown for introduction in the House. Before introducing any bill or amendment in respect of any financial matter by a member other than a Minister prior sanction of His Majesty shall be necessary, and such sanction may be obtained through a Minister of the Crown or a Minister of State or an Assistant Minister.[108] Laws cannot be passed without the approval of the National Panchayat but Royal assent is required at the final stage.[109] His Majesty the King can accept or reject the bill or return the bill for

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106. The Secretary of National Panchayat, Mr. Janga Bahadur Chand was king enough to give interview to the author. He said that "Rules and Procedures of the Rashtriya Panchayat 2019 came into force in the year 2019. Most of the legislative rules and procedure of this system are based on the rules and procedures of the Parliamentary System of 1959."
107. Art. 55(a) (1-5) and (b).
108. Ibid.
109. Art. 56 (1-4).
But major acts like the Land Reform Act of 1953, the Mulki Ain of 1963 and the New Education Plan of 1971 were enforced without consulting the National Panchayat.

reconsideration after consulting the Raj Sabha with a message. So the King has a real and comprehensive power which even in the last resort could not be over-ruled by the National Panchayat. This Constitution makes specific provision regarding the principle of Royal initiative in introducing bills relating to the armed forces.[110] His Majesty shall, in respect of every financial year, cause to be laid before the National Panchayat an annual estimate showing, among other things the estimate of revenue, the sums required to meet the charges on the Consolidated Fund, and to meet the expenditure to be approved by an Appropriation Bill.[111] The King can determine supplementary estimates in respect of any financial years.[112] At the recess of National Panchayat, His Majesty can promulgate such ordinances except Money Bills after consulting with the Raj Sabha. Such ordinance shall be laid before the House within seven days of its sitting subsequent to such promulgation.[113]

The members of the Council of Ministers are also the members of the House.[114] The House can move a vote of no-confidence against an individual member of the Council of Ministers.[115] There is a provision in the Constitution that His Majesty has been empowered to remove the Prime Minister at his discretion or on the basis of a resolution passed by a majority of the total members of the National Panchayat and by a 2/3 majority of the members present and voting.[116] But this article has not been

110. Art. 55 (a) (5).
111. Art. 62 (1-2). Constitutional provisions concerning financial procedure are similar to Chapter IV under the Constitution of 1959.
112. Ibid. (1-2).
113. Art. 57 (1-2).
114. Art. 26 (4) and (a-f).
115. Art. 36 (5)(d).
116. Art. 26 (d).

implemented till now in the Panchayat system though this Article was added by the first amendment.

Regarding the removal of Ministers the Constitution says that a Minister shall be removed if the Council of Ministers not having been constituted under the Chairmanship of the Prime Minister a resolution passed by the majority of the total members of the Rashtriya Panchayat present and voting to the effect that a Minister does not have the support of the National Panchayat is approved by His Majesty.[117] In fact, the Council of Ministers is individually and collectively responsible to the King and responsible to the legislature individually. This makes very clear the position of the King as the real executive.

The National Panchayat as the legislative body of Nepal has no right to amend the Constitution. There is a provision in the Constitution that any amendment to the Constitution of Nepal can be brought by the King after consultation with the Special Committee consisting of the members of the Standing Committee of the Raj Sabha and the Members of the Steering Committee of the National Panchayat, and only when it is consented to by a majority of at least 2/3 of the total membership of this Committee. The amendment shall be referred only to the National Panchayat by the King.[118]

117. Art. 26 (6) (e & f).
118. Art. 82 (1-2). On January 22, 1967, the Chairman of the National Panchayat, Rajeswar Devakota, disclosed and announced in the House that 'on the experience gained so far, H.M. the King has deemed it essential to introduce certain amendments in the Nepal Constitution in order to further strenthen the Partyless Panchayat System, to enable people's representatives shoulder greater responsibility by involving them more in the administration of the country, and to eliminate various obstacles hindering the day-to-day administration.- The Rising Nepal, Daily (Kathmandu), Vol. No. 59, January 23, 1967.

Various Committees of the House :

The National Panchayat has a number of Committees by which it is aided in its day-to-day functions. The provisions for such Committees exist in most of the legislatures of the world. But according to Art. 41 (2) of the Constitution, the composition and functions of the Committees of the Rashtriya Panchayat shall be regulated by the rules made by His Majesty. The National Panchayat has provided for the following committees: a Steering Committee; five Standing Committees; i.e., the Panchayat Committee, the Economic Committee, the Social Committee, the Administrative Committee; and the Agriculture and Land Reforms Committee]. there is also a provision for three other committees in the nature select committee viz., Public Accounts Committee, Estimate Committee and Privilege Committee.[119]

The Steering Committee is the most important one and it has played an important role as the 'little Legislature with limited powers' to conduct the business of the House. This Committee is composed of twenty-one members including the Chairman and the Vice-Chairman of the National Panchayat, the

119. The Rules and Procedures of the various committees have been laid down in the Rules and Procedures of Rastriya Panchayat 2019 promulgated by the King. - Nepal Gazette, Vol. 13, No. 50, Chaitra 17, 2020 V.S. See: Chiniyakaji Isthapit, "Rastriya Panchayatka Bivinna Samiti Haru ra Yaska Karya Haru", Gorkhapatra, Vol. 12, No. 155. At first, on Bhadra 24, 2023 V.S. His Majesty King Mahendra formed the various committees of the National Panchayat. Nepal Gazette, Vol. 16, No. Special Issue 23(C), Later on, in 2024, Kartick 13, again he reconstituted the various Committees of the National Panchayat - Nepal Gazette, Vol. 17, No. 28, Kartik 13, 2024 V.S.

Prime Minister, Ministers of Finance, Home, Panchayat, and Law who are the ex-officio members of the Committee. Other members of the Committee are elected from among the members of the House for a period of two years.[120] The Committee shall advise the Chairman of the National Panchayat in legislative matters. This Committee also plays a vital role in the life or death of a bill. Though the National Panchayat has no role in amending the Constitution, the Steering Committee has played an important part in amending the Constitution as the representative of the whole House. B.N. Schoenfield comments:

> "The Rashtriya Panchayat's affairs are contfolled by a Steering Committee and by the King who has unlimited power over the character and the duration of legislative sessions."[121]

The Chairman of the National Panchayat nominates 20 to 25 members to each of the Committee for two years. The Chairman and the Vice-Chairman of each Committee are elected by their members. The Minister concerned are ex-officio members. The main functions of these Committees are to scrutinize the legislations delegated by Act to the executive and to examine the implementation of the assurances given by the government on the floor of the House.

Coming to the Select Committees, as already stated, these are three in number, the Public Accounts Committee, the Estimate Committee and the Privilege Committee. The first two of these are elected by the House, but the third one is appointed by the Chairman of the National Panchayat. Each of these Committees has nine members and a Chairman. The Chairman of each Committee

120. Art. 41 (1-3).
121. Schoenfield, op. cit., p. 333.

is nominated by the Chairman of the National Panchayat. The members of the Public Accounts Committee and the Estimate Committee are elected by the House for a term of two years. The members of the Privilege Committee are nominated for a limited period only.

The function of the Public Accounts Committee is to examine the Annual Report of the Auditor-General and to submit a report on it to the House.

The function of the Estimate Committee is to examine the budgetary estimates and to suggest methods of economy.

The Privilege Committee is appointed by the Chairman of the House in case there is any breach of privilege of any member of the House. The Committee conducts enquiry and submits its repor t to the Chairman of the House, by whom it is appointed.

Estimate of the National Panchayat :

It has been observed that, "The National Panchayat has not achieved a significant role for itself as yet, and the government is still experimenting with the delegation of administrative authority to the local Panchayats."[122]

After about eight years since His Majesty's takeover, some members of the National Panchayat issued a joint statement and appealed to His Majesty the King and to the government to take some concrete measures for strengthening the basis of the Panchayat democracy. They suggested expansion of the basis of

122. Joshi and Rose, op. cit., p. 515.

election, impartial elections, encouragement for the exercise of civil rights, determination of limits to the exercise of powers under publid security act, release of political prisioners and return of exiled persons, safeguard of constitutional privileges relating to fundamental rights, mobilization of public force, making the proceedings of the National Panchayat open and implementation of the principle of the Rule of Law etc.[123]

As has been mentioned above, the National Panchayat is the highest legislative organ of the state but it enjoys very limited powers of legislation. The Constitution has placed innumerable restrictions in the way of its independent functioning. First, the proceedings of the House are kept secret. No member is expected to discuss or expose or indicate by any means the proceedings of the house in public. Any such discussion will mean the violation of the provisions of the constitution. Thus, an unnecessary gulf between the public opinion and the proceedings of the House has been created. This restriction has checked the opportunity to educate the masses. Secondly, the constitution has declared the system as partyless. Thus, this system lacks the character as found in other democratic legislatures. A report on the National Panchayat prepared by its secretariat in 1963 said in this context: "... The members of the Rashtriya Panchayat whether elected or nominated, have no feeling of groupism and are not swayed by party politics. Unlike the Parliamentary form of Government, where the opposition party generally considers it its aim and justifi-

123. This was a Joint Statement released by eleven members of the National Panchayat on September 27, 1968. See: Appendix 14.

cation to criticise and oppose the party in power for the sake of criticism and opposition, the Rashtriya Panchayat is a national body in real sense of the term with each of its members cherishing the national good and welfare ... . Cut motions as a form of disapproval of policy or token protests have practically no useful function owing to the partyless character of the Rashtriya Panchayat."[124] The opposition to the government means the opposition to the King.[125] So it is not permissible in the present system. Thirdly, the functional character of the National Panchayat confirms the fact that it serves more in an advisory capacity than in guiding the policy of the government. Fourthly, there is lack of financial administration in the Panchayat System, and it has never been considered as an important tool to introduce fiscal policy. This condition resulted from the apathy and lack of knowledge towards public finance among the people. Another reason for the weakness of the National Panchayat is the lack of physical facilities, like library, legislative reference service and consultants.[126]

124."Rashtriya Panchayat in Session", Nepal (A monthly Bulletin of General Information)(Department of Publicity and Broadcasting, Ministry of Panchayat Affairs, Nepal), Vol. I, No. 1, October, 1963, pp. 18-23. See: S.D. Muni, "Legislature and Foreign Policy in South Asia : the case of Nepal" (Art.) South Asian Studies, (Department of Political Science, University of Rajasthan), Vol. 6, No.1, January 1971, p. 35.

125. The King officially responded to a joint petition sent to him by 64 members of the National Panchayat, following the arrest under preventive detention act of a member on the 10th of July 1969 when the Budget session of the National Panchayat was on. In the King's reply to this joint petition communicated to the members of the Rastriya Panchayat through his Principal Secretary, the complaints of the members against the high-handedness and the arbitrary acts of the ministers were lightly dismissed. On the other hand, the petitioners were menacingly asked whether their collective sponsoring and signing of the petition was not promoted by the spirit of factionalism- Diplomaticus, op. cit., pp. 53-54.

126. Prachand Pradhan, "The Weaknesses of the National Panchayat", (Art.) Vasudha (Monthly), Vol. XIII, No. 9, August-September, 1970. p. 28.

The position of the so-called supreme legislature vis-a-vis the King is certainly subordinate. In this connection the following observation sums up the position succinctly:

> "The basic procedure is the same as in the 1959 Constitution. But there is a remarkable difference in the approach and attitude toward legislation. If royal assent to laws passed by parliament were taken for granted under the 1959 Constitution, a more active role is visualised for the King as the real head of the national executive department of the government in the legislative process under the new system. The King has a real wide veto power which even in the last resort cannot be challenged or over-ruled by the National Panchayat. Furthermore, the King may require it to 'submit its opinion' before the passage of any bill which is being considered by the legislature. The King 'may consider such opinion' and after that, give assent to the bill either in the form in which it was presented to the 'National Panchayat or as altered'. Though the so-called principle of royal initiative was observed in introducing money bills and bills relating to the subject of defence even in parliament under the 1959 Constitution, yet that Constitution itself was silent on the point. The 1962 Constitution makes specific provisions in the above matters."127

Position of the King in Theory and Practice :

The position of the traditional authority, i.e., the monarchy from 1768 to 1971, remains interesting in Nepal's constitutional history. Except for the period from 1846 to 1951 A.D. Nepal has remained under an absolute monarchy. During the period of Ranas (1846-1951) monarchy was nothing more than a symbol of national unity, as all effective powers had been taken away from it by the Ranas Prime Minister. King Tribhuvan, as we have seen, by the Interim Government Act of 1951, wanted to establish a parliamentary government under the aegis of the monarchy. After his death his successor King Mahendra wanted to

127. Diplomaticus, op. cit., p. 50.

restore the traditional position of the monarch as the real ruler of the Kingdom. Therefore, in the Constitution of 1959 and 1962, the supremacy of the Crown is maintained to the end.

The country remained in isolation and seclusion from the rest of the world before 1951. It was primarily due to the fact that the country is entirely landlocked. Earlier political developments had often involved changes in leadership within the existing political structure, but had only rarely affected the political process itself, that is the method by which political positions were gained and decisions made. "Traditional politics in Nepal had emerged from a long term, although not necessarily peaceful, counterposing of the interests of four elements in Nepali society; the Royal Family and its various collateral branches; those sections of the Brahman caste that performed certain religious, judicial, and astrological functions for the state and ruling families, the military and landholding aristocracy, mostly of Kshatriya caste status, at both the local and central level; and the Newar commercial caste families who dominated the trading system and the middle levels of the bureaucracy. The balance among these groups, or more frequently factious within these groups, varied from time to time. But until 1951 politics was their preserve..."[128]

For centuries Nepal's economy had been backward and stagnant. Nepal's isolation kept it unaffected from modern influence. The government's traditional economic policy was changed after 1930 only. Even now, Nepal is a very less developed country. Education

128. Rose and Fisher, op. cit., p. 164.

was a neglected subject in Nepal. The steps that the various rulers took in the field of education were insufficient and restrictive. The general mass consequently remained isolated and backward. Only the ruling families were interested in politics and the general masses remained totally apathetia due to their illiteracy. Most of the new elite was a product of the sudden and wholesale intrusion of external influence. But, "The political system they sought to introduce was neither an evolution from, nor a modification of, the traditional Nepali political process, but an alien system whose basic linkages were with the politics of post-independent India.[129]

The long history of isolation and backwardness, influence of traditional ideas and lack of education resulting in political apathy safeguarded the institution of monarchy in Nepal. By all these reasons, it has, in its long and continuous history, been offering active leadership to the country and the people. The King being so important in Nepal, the Nepalese politics and Constitution mobilize themselves on the basis of the Crown. "Thus, the Hindu political tradition, subtly adjusted to accommodate certain pre-Hindu, Nepalese culture values, has long served as an important bulward to the monarchy even during those difficult periods in modern Nepalese history when the Shah monarchs' capacity to govern has been severely limited by internal political developments", Again, the same writers have said that "A strong 'defence of the faith' mystique has long pervaded the Nepalese political culture, and indeed it is the present ruling family's central role in maintaining this that has helped

129. Ibid., p. 166.

sustain its rule for more than two centùries."[130]

The term 'His Majesty the King' has been used in the Constitution to mean "His Majesty the King for the time being reigning, being a descendant of King Prithvinarayan Shah and adherent of Aryan Culture and Hindu religion."[131] So kingship is not institutionalized to the office holder but is limited to a descendant of King Prithvinarayan Shah. "Nothing in this Constitution shall affect the law, custom and usages relating to the succession to the Throne by the descendants of His Majesty",[132] and the King has "exclusive power of enacting, amending and repealing the law relating to the succession to the Throne by the descendants of His Majesty."[133] The sovereignty of Nepal is vested in him and all powers executive, legislative and judicial emanate from him. These powers are exercised by the King through the organs established by or under the Constitution and other laws for the time being in force keeping in view the interest and wishes of the subjects according to the highest traditions of the Shah dynasty.

"The political system he (Mahendra Bir Bikram Shah Deva) created in 1962, after Nepal's brief experience with parliamentary democracy, was designed to thrust the monarchy into the centre of the decision-making process, a status it had not enjoyed for

130. Rose, Leo, E. - "Final Political Power is Still kept firmly in the hands Monarchy (Art.)", The Times Saturday, London, Nepal Issue Supplement, April 14, 1973, p. 1.
131. Art. 20 (1).
132. Art. 21 (1).
133. Art. 21 (2). See Also: Rajutaradhikari Ain 2015 V.S.

more than a century. Popular participation was to be allowed and even encouraged in the implementation of economic development and national-building programmes, but the definition of political goals and processes was to be the sole prerogative of the King."[134]

The King of Nepal is the central source of all powers in this Constitution. The King has enormous powers in this Constitution and the King has become an absolute ruler under this Panchayat System.

In this connection some of the provisions of the Constitution are to be noted.

The executive power of Nepal shall be exercised in accordance with the Constitution and other laws for the time being in force by His Majesty either directly or through Ministers or other officers subordinate to him.[135] All executive action to be done by the King under this Constitution shall be expressed to be taken in the name of His Majesty's Government except in cases where the rules made provide to be expressed in the name of the King.[136] The process by which their executive decisions are reached and the legal authority to achieve them can not be questioned.[137] A distinction is made between the action taken by the King personally and his government. It has been provided that orders, decisions and other instruments made and executed in the

134. Rose, Ibid., p. 1.
135. Art. 24.
136. Art. 24 (3) under clause (4) provided to be expressed in the name of the King.
137. Art. 24 (4).

name of His Majesty or His Majesty's Government shall be authenticated in such manner as may be specified in rules to be made by His Majesty, and the validity of an order, decision or instrument which is so authenticated shall not be called in question on the ground that it is not an order, decision, or instrument made or executed by His Majesty or his government as the case may be.[138] It is thus that in this Constitution, the King has come to possess far greater executive powers than in the previous ones.

To aid and advise the King there is a Council of Ministers.[139] Under a provision in the Constitution the King can constitute the Council of Ministers either under his own Chairmanship or that of the Prime Minister. The Prime Minister and other Ministers of the Crown are to be appointed from among the members of the Rashtriya Panchayat.[140] He has full authority to appoint a Council of Ministers in his own discretion. The Ministers are collectively and severally responsible to His Majesty.[141] It is easy for the King to remove a minister from the Council of Ministers because the Constitution of Nepal has so arranged the partyless democratic Panchayat System that the Ministers are not collectively responsible to the legislature. There is a provision in the Constitution that the Prime Minister can be elected by a resolution passed by the majority of 2/3 total members of the House.[142]

138. Ibid.
139. Art. 25 (1).
140. Art. 25 (3).
141. Art. 26 (4).
142. Art. 26 (3).

It was of no use to include this Article in the Constitution which has not been enforced uptil now. The allocation and transaction of the government business are done in accordance with the rules approved by the King. In fact, the Council of Ministers is the 'first grade of advisory body'[143] or 'Kitchen Cabinet' of the King.

To assist him in his day-to-day functions, there is another body known as Raj Sabha (State Council) like the Rastriya Parishad (Council of State) of the Constitution of 1959. It is something like a Consultative body for the Crown.[144] His Majesty appoints the members of the Raja Sabha and the Standing Committee of this body.[145] The King summons the meetings of the Sabha under his own Chairmanship, but he can appoint someone else to preside over the meetings in his absence. It is a consultative and advisory body of the Crown on the executive, legislative, judicial and constitutional matters. In fact, the Raj Sabha is the 'Second grade advisory body of the King'.[146]

In the legislative field, the King summons, prorogues and dissolves the National Panchayat. He can prorogue the House ordinarily for not more than six months.[147] The King is empowered to nominate fifteen per cent of the total members, i.e., sixteen members of the National Panchayat.[148] The vacancy of a nominated member shall be filled by the King in his discretion.

143. Nepal Today, Calcutta, Vol. II, No. 11, p. 101, May 1, 1963.
144. Joshi and Rose, op. cit., p. 414.
145. Art. 23 (2) and Art. (10).
146. Nepal Today, Calcutta, Vol. II, No. 101, May 1, 1963.
147. Art. 42 (3).
148. Art. 38 (1) (d).

If membership of any member of the National Panchayat has been cancelled on the ground of his absence from the meetings of the House for a continuous period of three months, the King may waive off such restriction in any circumstance as he may deem fit.[149] Whether a member of the National Panchayat possesses the requisite qualification or not is to be decided by the King. The King may also appoint a Commission to enlighten him by submitting a report with a finding whether a member of the House has comitted a breach of secrecy or not. His approval is final.[150] The Chairman of the National Panchayat shall be appointed by the King on the recommendation of the House.[151] In case when the Chairman of the National Panchayat has not been appointed and there is also a Vice-Chairman a person designated by the King shall act as the Chairman of the House.[152] No bill or amendment shall be introduced in the House without the prior approval of the King.[153] The King has absolute and wide powers over the decisions of the House. The King can accept or reject the bills approved by the House. He can even return a bill for reconsideration or modification or reject the bill which has been passed by the House.[154] He can issue an ordinance after consultation with the Raj Sabha, when the National Panchayat is not in session, but these ordinances should be approved by the House within a week of its re-assembly, and cease to have effect after forty-five days of its session, unless previously withdrawn by the

149. Art. 35.
150. Art. 39 (1).
151. Ibid.
152. Art. 39 (4).
153. Art. 35 (a).
154. Art. 56 (2).

King.[155] The King has full authority to pardon the members of the National Panchayat for their misbehaviour or incapacity.[156]

In the judicial field also the King is the ultimate authority. The Chief Justice and other Judges of the Supreme Court are to be appointed by him.[157] He has also the power to appoint a Commission or other judicial commissions for the smooth working of the judiciary.[158] The King has full authority to command the Supreme Court to revise its earlier decision in a case.[159] He has the right to grant pardon and remit, suspend or commute any sentence passed by a judicial authority.[160]

During emergency, the King would appear more powerful than under the Constitution of the Kingdom of Nepal 1959. If the King is of the opinion that a grave emergency exists whereby the security of the country as a whole or any part thereof is threatened by war, external aggression or internal disturbance, he may, by Proclamation, suspend (except this Article i.e., Art. 81) all or any of the articles of this Constitution and assume all powers vested in or exercisable by the National Panchayat or any other governmental body or authority. In the Constitution of 1959, the King had the right to suspend the whole Constitution except those relating to the judiciary but this Constitution has granted to the King the power to suspend all the

155. Art. 57 (1-2).
156. Supra the case of Ram Raja Prasad Singh in this Chapter.
157. Art. 69 (1).
158. Art. 94.
159. Art. 72 (b).
160. Art. 84.

articles of the Constitution except Article 81 only. In this Constitution there is no limitation of period as it was there in the previous Constitution.[161] In the words of B.N. Shoenfield, "Art. 81 expands and refines the provision of Article 55 of the old Constitution."[162]

In the matter of Constitutional amendments also some responsibility lies with the King. Though the National Panchayat is the highest legislature it has no right to amend the Constitution. But there is a provision that 'the Rashtriya Panchayat may, by a motion passed by a majority of the members, present an address to His Majesty.'[163] This Constitution has granted full authority to the King to amend the Constitution. The Constituion is the gift of the King to the nation because he is the source of all power. His Majesty, by Proclamation, may amend the Constitution.[164] But there is a provision that 'any amendment to the Constitution can be brought by the King only after consultation with the Special Committee consisting of members of the Standing Committee of the Raj Sabha ~~and the members of the Steering Committee of the Raj Sabha~~ and the members of the Steering Committee of the National Panchayat. Such amendment can be made only after consented to by a majority of at least 2/3 of the total members of that Committee.[165]

The King is the Supreme Commander of the Royal Army. The Commander-in-Chief and other officers of the Army and Police

161. Art. 81.
162. Schoenfield, op. cit., p. 335.
163. Art. 44.
164. Art. 82.
165. Ibid., 82.

are to be appointed by him. He has the full authority to appoint and dismiss any officer of the Royal Army and Police. On Finance and Army affairs, the King has full control. Titles, honour, and decorations are conferred by him and unless he approves no citizen can accept any honour or reward given by a foreign state. The King may also authorize any person or persons (a Royal Representative or a Council of Royal Representatives) to perform his day to day functions during his absence from the State.[166]

The King shall appoint Auditor-General, Chairman and other members of the Public Service Commission, Attorney-General, Election Commissioner and Anchaladish (Zonal-Commissioners) at his own discretion. He appoints the members of the Judicial Service Commission, members of Zonal Committees, the Planning Commission and other Commissions.[167]

The provisions of the 1962 Constitution show a considerable expansion of Royal prerogatives as compared to those in the 1959 Constitution. This is clear, as has been pointed out, in respect of the relationship of the Crown with the Council of Ministers and the legislature and also in respect of the wide 'emergency' and discretionary powers granted to the King.

> "The emergency powers given to the King cover a very wide range, and certain legal restrictions placed on them are apt to be ineffectual in the Nepali context and will leave the King free to suspend, amend and abrogate the 1962 Constitution as easily or lightly as the 1959 Constitution."[168]

166. Art. 83 (1), Art. 85, and Art. 86.
167. Related with Articles 74, 75, 77, 78, 79, 86 and 86 (2).
168. Diplomaticus, op. cit., p. 51.

Dr. Leo E. Rose says, "The primacy of the Palace in the decision-making process was the principal feature of the Constitution that King Mahendra introduced in 1962. While this political system is not specifically defined as an absolute monarchy, in effect this is what has emerged. The Council of Ministers serves at Royal pleasure and the Rashtriya Panchayat (indirectly elected parliament) has no autonomous legislative authority. Power is shared, if at all, at the King's discretion and on his terms."[169]

National Guidance Council and Special Advisory Council :

King Mahendra had formed two bodies to aid and advice him in his day to day functions. These were the National Guidance Council (created in 1963) and the Special Advisory Council (established in 1969), and were not provided for in the Constitution.

National Guidance Council was formed under the Chairmanship of King Mahendra on August 25, 1963. King Mahendra had said in the opening Meeting of the Council that,

> "National Guidance is not an executive body nor legislative. Its primary function is to discuss national problems and only suggest ways and means to overcome them in the light of the country's political and economic object."[170]

In fact, the main function of this Council was to maintain necessary coordination with regard to the Panchayat system at all levels, to consider problems arising with regard to the Panchayat system from time to time, and to prepare a programme with a view to making the people conscious of their duty towards the successful implementation of the Panchayat System as well as

169. Rose, op. cit., p. 1.
170. H.M. King Mahendra's Address in the opening Meeting of the Council, 17 June, 1965.

to providing general guidance even to His Majesty's Government if necessary.[171]

An eleven member Sub-committee headed by Tanka Prasad Acharya was formed to formulate the policy and programme of the Council. In the absence of the King, T.P. Acharya was to preside over the meettings of the Council.

An English Daily of Kathmandu, The Motherland stated:

> "The National Guidance Council is continuing its deliberations on national problems of great importance. By virtue of its composition, H.M. Mahendra is its Chairman and its terms of reference, the Council is an influential body, its decisions and suggestions could in all possibility be the cornerstone of the government's all future actions. Indeed, it would be an unfortunate underestimation to say otherwise. Hence, the anxious public interest generated by it in its present deliberations."

The Editorial adds:

> "as the Council is still continuing the present series of the meeting, it is too early to forecast the nature of its decisions."[172]

But later on in 1967 the same paper made the following comment about its role :

> "The National Guidance Council is a dismal failure ... and just another department of the Home Ministry ... It has failed to provide necessary leadership to Class Organisations. Since the recent amendment of the Constitution permits the formation of non-political organisations, the Council has become superfluous."[173]

Later on the National Guidance Council was abolished in April 10, 1967.

Special Advisory Council :

The King had also appointed a four-member Special Advisory

171. Gorkhapatra, August 26, 1965.
172. Editorial of the The Motherland, Daily (Kathmandu), April 20, 1964, Vol. 7, No. 89.
173. Ibid., March 3, 1967.

Council to advise and assist him in discharging his administrative duties.[174] It was not a body provided for by the Constitution but it would in fact be of assistance to a considerable extent in solving the manifold problems facing the nation with the co-operation of the seasoned politicians constituting it. It had been formed only to enable the Council of Ministers to benefit from the experience and co-operation of active Panchayat Members. It was an ultra-constitutional body. The members of this Council would not receive salaries and they would not be entitled to use flags in their cars. King Mahendra had appointed former Chairman and Prime Ministers, Dr. Tulsi Giri, Sri Surya Bahadur and the former Minister Viswa Bandhu Thapa and the Prime Minister as ex-officio members of this Council in 1969. On the formation of this body various comments were made. For example, the Nepal Times wrote :

> "The new 'alliance' formed by Surya Bahadur Thapa, Dr. Tulsi Giri and Viswabandhu Thapa is based on the proposition that 'the enemy of my enemy is my friend'. It proves that for these Panchayat politicians political expediency is dearer than principles. Surya Bahadur Thapa's primary objective is to checkmate the growing power of Kirtinidhi Bista. Viswabandhu Thapa and Dr. Tulsi Giri have responded to his overtures because they want to re-establish their link to power ... Observers are looking forward to the possible outcome of this political somersault of Dr. Tulsi Giri, who once had 'fundamental differences' with His Majesty, and of Viswabandhu Thapa, who had once described the Panchayat System as unsuitable for Nepal."

Again the Paper wrote :

> "The formation of such a Council will not prove beneficial for Nepal in the present political context. It will undermine the reputation, efficiency and enthusiasm of the newly formed Council of Ministers. Something like a dual administration will result. People will start doubting the utility of the government at a time when the country is faced with a number of

174. Nepal Gazette, Vol. 18, No. Special Issue 40, Chaitra 29, 2025 V.S.

> problems as a legacy from the past. The Constitution has made no provision for such a Council. Some of the persons expected to be included in the proposed Council are no longer attached to the Panchayat System. One of them had declared that he had 'constitutional differences' with the King. This report has not been contradicted so far. Another person had retired from Panchayat politics when the attractive term 'Partyless' was added to it."175

An Indian Scholar has commented :

> "It was assumed in many quarters that such a step was taken to put a check on the independent working of the Council of Ministers. Worse still, generally those members got place in the Special Advisory Council who were known for differences with the then Prime Minister and his team. ... Such persons could hardly render co-operation to the Prime Minister. The hostility between these two bodies immediately became visible which undermined the prestige of the Council of Ministers."176

A leading paper reported :

> "These members (belonging to Special Advisory Council) are organizing groups contrary to the objectivesof the system and their own commitment. They are indulging in baseless propaganda against the Bista Government."177

Later on this body was dissolved in August 1971.178.

The Raj Sabha (State Council) :

To assist the King of Nepal there is another body known as the Raj Sabha (State Council). It is just like the Cunsultative body of the Crown. "It is primarily an advisory body whose origin can be traced back to the traditional Bharadari or the Council of Nobility. It has something in common with the

175. Nepal Times, Daily (Kathmandu), April 9, 1969; Nepal Press Digest, Vol. 14, p. 160.
176. Chauhan, op. cit., pp. 225-26.
177. Jagriti, Weekly, August 8, 1969.
178. Nepal Gazette, Vol. 21, No. Extraordinary Issue 18, Sravan 12, 2028 V.S.

British Privy Council and also with the Genro or the Council of the elder statemen in the Japanese Constitution of 1869."[179] It consists of ex-officio members and others appointed by the King. This Council has the following ex-officio Members : The Prime Minister, The Chief Justice, The Chairman of the National Panchayat, The Deputy Prime Minister, Ministers of the Crown, The Bada Gurujyu, The Commander-in-Chief, The Auditor-General, The Chairman of the Public Service Commission, The Chief Election Commissioner, The Attorney-General, and The Mool-Puhorit. His Majesty may also appoint to it from among person who are renowned in different fields of national life or who are otherwise considered fit to be members of the Raj Sabha.[180] At present, there are altogether 172 members. They hold office during the pleasure of the King. This Council will be summoned by the King, if deemed necessary.[181] The King shall preside over the meetings and in his absence the Crown Prince shall preside provided he has attained the age of eighteen years. But in case the Crown Prince is not eligible the King shall designate a Vice-Chairman for the purpose and in no case no such Vice-Chairman is designated the Raj Sabha shall decide the question.

A meeting of the Raj Sabha shall be summoned on the demise of His Majesty, or on his abdication (23 (5) (a)) or

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179. Diplomatious, op. cit., p. 56.
180. Art. 23(2). After the promulgation of the Constitution, King Mahendra had appointed 69 members in this Council under the Art. 23 (2), Nepal Gazette, Vol. 12, No. Special Issue 40, Chaitra 20, 2019 V.S.
181. Art. 23 (3).

if at least one-fourth of the total members of this body (of whom at least four should be ministers of the Crown) sign a requisition declaring that His Majesty is unable, by reason of mental or bodily infirmity, to command the summoning of a meeting (23 (6) (b)). In the first case the Raj Sabha shall proclaim the accession to the Throne of heir apparent, in accordance with the law, custom and usage relating to the succession to the Throne and a Regent or a Council of Regency in case the King is below the age of eighteen years. In the second situation if the Raj Sabha decides by a majority of at least two-thirds of its total membership that the King is not physically or mentally fit, it shall proclaim the Crown Prince to be the Regent if he has attained the age of eighteen years and, if he has not shall subject to the relevant laws proclaim a Regent or a Council of Regency.[182] This Regency shall come to an end on the demise or abdication of the King or when the informs the Raj Sabha that he is fit to resume his royal functions.

A standing Committee of the Raj Sabha consisting of seven to fifteen members designated by the King may carry out all its functions,[183] except those relating to succession to the throne

182. Art. 23 (2) (a-m). The accession to the throne of His Majesty King Birendra was proclaimed by the meeting of Raj Sabha held at Narayan Hitty Durbar, Royal Palace, on January 31, 1972. The Proclamation was broadcast over Radio Nepal by the Chairman of the Standing Committee of Raj Sabha, Mr. Ranga Nath Sharma, after its meeting held at the Royal Palace. - Rising Nepal, (Kathmandu), Vol. VII, No. 48, February 1, 1972.

183. Art. 23 (10)(a). On the basis of 1962 Constitution, King Mahendra appointed a fourteen member Standing Committee of the Raj Sabha with Dr. K.I. Singh as the Chairman. But he resigned complaining that the Chairman of the Standing Committee of the Raj Sabha should occupy a higher position than the Chairman of the Council of Ministers. After Dr. K.I. Singh's resignation, R.K. Shah was appointed in that post. But later on he was dismissed for his alledged support to the Students' Movement. Then after Shah, Ranganath Sharma was appointed in that post.

or the Regency. The King shall preside over the meetings of this body, or he shall designate any member of the Standing Committee as its Chairman for four years. His Majesty may consult with the Standing Committee on any matter and he may seek its advice. Again this body is to act in conjunction with the Steering Committee of National Panchayat during the period of National emergency and in the Constitutional amendment process.[184] Writing in July 1971 an important Nepalese public figure stated: "As of now working definite can be said about the role of the Raj Sabha except that it is in keeping with the King Mahendra's practice of establishing high prestige Council with no specific responsibilities but vague and general residual powers as he had done in the past when he was ruling through a Cabinet.[185] It may safely be said that the position still remains the same.

Mantri Parishad (Council of Ministers) :

A Mantri Parishad (Council of Ministers) is provided by the Constitution of 1962. The original Constitution laid down that the Council of Ministers shall be under the Chairmanship of the King, consisting of such Ministers as he may appoint. The King had also the right to "designate any Minister to be the Chairman or the Vice-Chairman of the Council of Ministers."[186] But in 1967 after the amendment of the Constitution there was same verbal modification, although as far as the relationship between the King and the Council of Ministers was concerned

184. The Constitution of Nepal was first amended in 1967 according to the provision of the Constitution, Art. 82(2).
185. Diplomaticus, op. cit., p. 57.
186. Art. 25 (1) of the Constitution of 1962.

there was no change. Now the Constitution states : "His Majesty shall constitute the Council of Ministers under His own Chairmanship or under the Chairmanship of the Prime Minister."[187] Thus it was only after the amendment that the Constitution mentioned the office of the Prime Minister and also that of the Deputy Prime Minister.

The members of the Council of Ministers including the Prime Minister and the Deputy Prime Minister are to be appointed by the King. The only limitation on the King's power is that all members of the Council of Ministers should be member of the National Panchayat.[188] But even here Art. 26 (2) says: "Provided that any person, who is not a member of the Rastriya Panchayat, may also, if His Majesty deems fit, be so appointed for a period not exceeding six months." Thus it is possible for the King to foist as the Council of Ministers a leader who is not a member of the National Panchayat for a period of six months.

The Council of Ministers is to aid and advice the King in the exercise of his functions. The Constitution says:

> "It shall be the duty of the Council of Ministers to give general directives to and keep general control over the administration of the country in accordance with the provisions of this Constitution, other laws for the time being in force and such directives as may from time to time be given by His Majesty in the interest of Nepal and the Nepalese people."[189]

187. Art. 25 (3).
188. Art. 26 (1).
189. Art. 25 (1). Kind Mahendra had issued directives and instructions to various institutions, Members of the Council of Ministers and Rastriya Panchayat to maintain close contact with the people and to find out their hardships.

The Council of Ministers is not a Cabinet and is not intended to be one. The Ministers are appointed by the King and can be dismissed by him at his will. There is explicitly stated in the Constitution that 'the Ministers shall be collectively and severally responsible to His Majesty.'[190]

Nepal Today commenting on amendment of 1967 as far as it affected the Council of Ministers had stated :

> "With a lot of fanfare the change has been announced as well. It remains a trifle unclear why the King has not cared to call the Council a Cabinet. He would have had, then, a Cabinet complete with a Prime Minister and a Deputy Prime Minister. Whatever the reason, the Council remains a Council, in name and in fact. The Chairman and Vice-Chairman get new names, though. There is no other change and the structure remains what it was before. The Council is not responsible to the National Panchayat and the Ministers are to be appointed by the King and are to remain answerable to him which means also there will be no joint responsibility. The Council thus continues to be what it was, an assemblage of persons who are picked up by the King and hold office during his pleasure - This is not just a formula but a hard fact. Even in office what they does not perhaps amount too much. Real power vests in the monarch ... . The Rastriya Panchayat is, as before, an advisory body and can be dismissed when the King pleases. And Ministers have no joint responsibility nor are they responsible to the legislature."[191]

The subordination of the Council of Ministers to the King has been also pointed out by a ~~vuteral~~ Veteran Nepalese Statesman :

> "The King's choice of Ministers is not in practice limited even by the constitutional provision that requires Ministers to be members of the National

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190. Art. 26 (3). King Mahendra had assumed the portfolio of Defence after scrapping the Parliamentary system in December 1960. Till June 16, 1965, he did not give up the important portfolio to any minister.
191. 'Meaningless' (Editorial), <u>Nepal Today</u>, Vol. 6, No. 5, February 1, 1967 , p. 996.

Panchayat inasmuch as a fixed percentage of membership of the legislature is composed of the King's nominees. Again, once a minister is appointed, the National Panchayat can have only limited control over him. Even no-confidence motions backed up by 2/3 of the total membership of the National Panshayat may or may not lead to his dismissal in so far as the Constitution leaves the matter to the King's discretion even after a vote of no-confidence against the Minister in the legislature. Thus, the principle of ministerial responsibility which lay beneath the 1959 Constitution is modified by the 1962 Constitution which permitted the King to dismiss or retain a Minister without reference to the support he may have in the National Panchayat."192

What is the actual position of the Council of Ministers in this System ?

Except in the 1959 Constitution where the term Cabinet occurs, in the other three Constitutions the term Council of Ministers has been used. In the Rana Constitution of 1948 this body of Ministers was responsible to the Sree Tin Maharaja (Prime Minister) rather than to the State Legislature. In the Constitution of 1959, the Cabinet headed by the Prime Minister, was responsible to the popular House of the Representatives. But, in the Interim Act of 1951 and in the Constitution of 1962, the Council of Ministers was responsible to the King.

In the present system the position of the Council of Ministers is not like that of the Cabinet in a Parliamentary System of Government. It has not even the semblance of it. In a Parliamentary System the Council of Ministers is constituted by the majority party in the legislature and the leader of that party becomes the Prime Minister, heads the government and is

192. Diplomaticus, op. cit., p. 51.

responsible to the legislature and to the people of the State. The Head of the State possesses only constitutional powers and the real functionaries are the ministers who are the members of the legislature. They remain in office so long as they retain the confidence of the Parliament and they are responsible to that body and through it to the people for all their public responsibilities individually and collectively. Responsibility to Parliament is the sine qua non of Parliamentary government. But in this Panchayat System, Ministers are collectively and individually responsible to the Crown.

King Mahendra created a new kind of political system as according to him the western model did not suit the genius of the country and the people. His aim was, he explained, to conduct the administration of the country on the basis of popular consent and to achieve the real object of democracy by associating the people with the administrative system to the extent possible through the medium of the Panchayat democratic system under the dynamic leadership of the Crown.

The Council of Ministers headed by the Prime Minister at the beginning of the Interim period and the Cabinet of the Constitution of 1959 were more democratic though ultimately responsible to the King. It could claim to have representatives of the people. But the Council of Ministers of other periods were 'embryonic' Cabinets and showpieces and policy-making was carefully preserved within the inherent right of the Crown.

According to this Constitution, the executive powers are vested in the King, who will appoint Council of Ministers to aid

and advise him in his functions. In this system, Ministers are really ministers of the Crown, i.e., they are appointed and are dismissable by the Crown. The Crown chooses, appoints, dismisses and controls the Council of Ministers. Beginning since 1962 till his death, King Mahendra appointed six ministries on his own will, and several ministers were picked from many fields under his own Chairmanship and under the Chairmanship of the Prime Ministers.[193] "This was widely interpreted as an expression of the King's determination to downgrade the National Panchayat and to clarify beyond all doubts its subordinate position in the new political structure."[194]

The relationship between the National Panchayat and the Council of Ministers cannot be considered an important feature as it is in a Parliamentary system. The new political system does not recognise the main characteristics of the Parliamentary System. It appears to give substantial power of control over the ministers. Members of the Council of Ministers will be selected from among the members of the National Panchayat. They will hold office as long as they retain their seats in the National Panchayat. A vote of no-confidence passed against any minister by majority and 2/3 of the members present and voting will effect the tenure of office of a minister concerned. In this way the National Panchayat exercises its limited form of control over the ministers. But the life and death of the Council of Ministers depends upon the personal whim of the King rather than on the

193. See: Appendix, [redacted] No. 17.
194. Joshi and Rose, op. cit., p. 405.

confidence of the legislature. We cannot apply here the same characteristics of the Cabinet system as we can in a parliamentary system. In this system, the basic characteristics is that the Council of Ministers is subordinate to the one individual, i.e., the King and not to the Prime Minister.

In this context, the relation of the members of the Council of Ministers with the general masses has been left behind. Though King Mahendra had emphasised that "every elected representative and every member of the different class organisations should look upon themselves as the servants of the nation and address themselves honestly to the task in hand in a disciplined manner and with a high sense of duty,"[195]but the Panchas preferred to placate the Royal Palace sources for personal aggrandissement rather than to work for mobilization of the people according to their proposed faith. Panchas have appeared to be more interested to be ministers than to dedicate themselves for nation building tasks. The people are confused about the role of these Panchas who seldom care for the masses, but are usually inclined to please the King and corrupt the limited electors.

According to another provision (Article 25(3)) the Council of Ministers can be formed under the Chairmanship of the Prime Minister. Prior to the first amendment of this Constitution, there was the Chairman in the Council of Ministers who was to be appointed by the King to aid and advise him in the discharge of his duties. It was the duty of this body to give general

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195. Proclamations, op. cit., p. 215.

directions to and keep general control over the administration of the country in accordance with the provisions of the Constituion. But after the amendment of the Constitution, the Chairman of the Council of Ministers was redesignated as the Prime Minister and the Vice-Chairman as the Deputy Prime Minister. The amendment limited the term of office of the Prime Minister to five years and added, 'in case High Majesty so considers proper, he may appoint the Prime Minister after ascertaining the opinion of the National Panchayat according to the procedure prescribed by him.' The King may constitute the Council of Ministers under his own Chairmanship or under the Chairmanship of the Prime Minister but if he is present at the meeting, he shall preside over it.[196] The changes in the office of the Prime Minister of Nepal are largely a matter of form rather than of substance. Before the amendment of the Constitution, there was no importance attached to the post of the Chairman but after the amendment it seemed that in the post of the Prime Minister has been created a post of honour and prestige. The King has full power to appoint, promote and remove the ministers without the consent of his Prime Minister. Though the House can pass a vote of no-confidence against the Council of Ministers or an individual minister, it has to be approved by the King. The Chairman of the Council of Ministers and also Prime Ministers during the Panchayat era so far have always been the incumbent ministers, 'returned unopposed' to the National Panchayat from their constituenbies."[197]

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196. Art. 25 (4).
197. Diplomaticus, op. cit., p. 51.

Position of the Prime Minister in this System :

The Constitution of Nepal has created the office of the Prime Minister after its first amendment in 1967. Though the office of the Prime Minister has been created, it is not a constitutional key post. The King has enormous powers and as such the Prime Minister is merely the shadow of the King and has been much reduced in importance. The system is partyless and the article 26(3) has not functioned till to-day. So it remains vague, as the provisions given in the Constitution regarding the responsibility of the Prime Minister are not defined very precisely.

A new convention has been established after 1966, when Prime Minister Surya Bahadur Thapa reshuffled his second Council of Ministers. At that time King Mahendra said: 'the Council of Ministers should be formed under the Chairmanship of the Prime Minister by which new traditions can be established for the smooth working of Panchayat Democracy.'[198] The new convention established is that when the Prime Minister resigned, the Council of Ministers shall dissolve itself autbmatically. In this system, there is no opposition leader in the House nor is it necessary to dissolve the House for general election. Of course, the King appoints the Prime Minister and other ministers, who serve at his pleasure, to assist him in the exercise of his functions and it is for him to accept the advice tendered by his ministers. The grip of the King over his Council of Ministers is really right. Every member of the National Pandhayat is fit to be in

198. King's Proclamation, August 10, 1968.

a Council of Ministers because there is no party line or group line, but only the guideline given by the King. The Prime Minister is like a cipher. He has to work under the leadership of the Crown and to follow the guideline provided by the King. There is some evidence to show that changes were made in the personnel of the Council of Ministers with changes in the office of Chairmanship and its Chairman or that of the Prime Minister.[199] These persons had never lost a vote of confidence in the National Panchayat but could remain in office only till they enjoyed the confidence of the Crown. Though the Constitution has provided for a post of the Prime Minister, in actual practice the King has taken upon himself the full responsibility of administration.[200]

At present the Prime Minister is said to be "nothing but only a decorated ornament for the King's glamour". Under the present Constitution the Prime Minister is bound to remain a creature of the King and would never be able to acquire the position enjoyed by his counterpart in a parliamentary system. The position of the Council of Ministers is akin to that of the American Cabinet. As long as the present position remains one has to look to the King and not to the Prime Minister for all initiative in the government.

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199. See : Appendix 17.
200. Besides maintaining control over the executive, legislature and judiciary, the King exercises control over the execution of the decisions by maintaining direct contact with the bureaucrats. He gathers informations through officials. He also issues directives and warnings to them. He has maintained the supremacy of the Royal Secretariat over the Central Secretariat by personal contacts with the high officials, making political appointments and promotions, issuing directives and keeping supervision over them through his secretariat.

The Sarbochha Adalat (The Supreme Court of Nepal) :

The Supreme Court is the highest tribunal of Nepal. According to this Constitution, this Court consists of a Chief Justice and other judges not exceeding six in number, unless a larger number prescribed by law, shall be appointed by the King.[201] There is a provision in the Constitution that the King can appoint the Chief Justice with the consent of Raj Sabha if he so desires, and if he thinks fit, he can consult with the Chief Justice on the appointment of other judges of the Supreme Court.[202] The King can also appoint ad-hoc or Additional Judges with the consent of the Chief Justice.[203] Judge of the Supreme Court can hold office until he attains the age of sixty-five years. No person can be qualified to be a judge of the Supreme Court unless he has at least for five years held the post of Zonal judge or an equivalent judicial post, or practised for seven years in the capacity of a government or private advocate or he is in the opinion of His Majesty, a jurist.[204] A judge may resign his office or may be removed from office by the King if a Commission appointed by the King of his own accord or as a result of an address presented by the National Panchayat reports that he is unable to perform his duties.[205] However, it may be noted that Mr. Bhagavati Prasad Singh, who was the Chief Justice of the Supreme Court was forced to resign by the King in 1970 although no Commission had been appointed to find out whether he was capable of performing his duties or not. As regards the remuneration and other conditions of service of the Chief Justice and other Judges these are not

201. Art. 68.
202. Art. 69 (2).
203. Art. 69 (8).
204. Art. 69 (3) (a-c).
205. Art. 69 (4) (b).

mentioned in the Constitution and are to be determined by law.[206]

The Supreme Court has an original and appellate jurisdiction and has also the power to revise non-appeallable cases decided by lower courts.[207] The Supreme Court has been given the power to issue directions, orders or writes, including writs in the nature of Habeas Corpus, Mandamus, Prohibitions, Quo-Warranto and Certiorari for the enforcement of fundamental rights and to ensure effective protection b the court of the rights of the individuals against the state and the government. Many leading political and constitutional cases have been decided by the Supreme Court of Nepal.[208] Some of the important cases decided by the Supreme Court have been the following, the 'Motherland' case, Dr. K.I. Singh Vs H.M.G., Rishikesh Shah Vs. Acting Joint-Commissioner Laxaman Bickram Bhandari, and the case of Shanker Ghimire, Nirmal Lama and Ram Raja Prasad Singh, candidates from the Graduate Constituency for the National Panchayat. There is a provision in the Constitution empowering the Supreme Court to exercise jurisdiction over cases arising out of curtailment of fundamental rights.

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206. Art. 69 (6).
The remuneration and other conditions of service of the Chief Justice and other judges of the Supreme Court have been determined by an Act. According to this Act, the Chief Justice shall draw a salary of 1800/- per month and 1500/- has been fixed to other judges - Nepal Gazette, Vol. 12, No. Extraordinary Issue No. 44(c), Arts. 7-11.

207. To make cheap and quick justice, Zonal Courts were formed in all the fourteen Zones of the Kingdom of Nepal under the 1964 Judicial Administration (Amendment) Act. The existing Regional Courts were replaced by 66 District Courts for 75 Development Districts.

208. Rameswar Sonar Vs. Special Police Department, Decision No. 234, 30/1/2020; Lalu Kumar Shahi Vs. H.M.G., Decision No. 240, 26/5/2021; Dr. K.I. Singh Vs. H.M.G., Decision no. 279, 32/2/2022; The Motherland Vs. HMG, Kathmandu, Decision No. 316, etc. - Nepal Kanun Patrika, 2023.

The Supreme Court has not been given the power to over-rule its own decisions. However, the Constitution provides that, "may review any decision made by it on such terms and conditions as may be prescribed by law; and may revise its previous decision in a case and finally decide in accordance with law if His Majesty issues a command for the revision of that case (already decided by the Supreme Court) on the recommendation of a Judicial Committee appointed for that purpose on the application of the concerned party within the time fixed by law.[209]

Though the Supreme Court of Nepal is the highest tribunal of the Kingdom of Nepal, it is not an independent body in the real sense of the word. The King is the guardian of the Constitution because the Constitution is the gift of the King to his subjects, and because this system is not based on the theory of separation of powers like that of U.S.A. There are many reasons for the weak position of the judiciary. First, the judges are to be appointed by the King as in other countries, and he has also the right to remove them from office at his own will. But in other democratic countries, though the judges are to be appointed by the Head of the State, the legislature has the right to remove them from office on the strength of a resolution passed by 2/3 majority of the present members of the House. But in this system, the judges can be removed by the King at his own will and also if the National Panchayat with a majority requests the King in a petition to remove the judge from his office. Secondly, the

209. Art. 72 (a and b).
King Mahendra had appointed a Judicial Committee consisting of three persons on Bhadra 8, 2028 (1971). - Nepal Gazette, Vol. 21, No. Special Issue 25.

judiciary is not an independent body because the King, by Proclamation, can suspend, (except article 81(a)), any of the article of this Constitution or and provision of such articles. Though judiciary is an impartial, dignified safeguard of individual liberty under this Constitution, the King remains the guardian of the Constitution.

Assessment :

The Constitution is not meant for a parliamentary system and King Mahendra had always after 1960, deprecated any system which gave the legislature unrestricted power to maintain and to remove the executive. He firmly believed that Nepal's resort to parliamentary system would again throw Nepalese politics into the pen of party-politics. He did not have any dislike for democracy. In fact, he was convinced that democracy was essential to Nepal because, without it, there would be no political stability. But he was also emphatic in his belief that the democratic apparatus must guarantee political stability and its form should be such that Nepal could understand and work. King Mahendra, therefore, decided to establish partyless Democratic Panchayat System and a strong executive under his own leadership. The Constitution provided for a Council of Ministers. But they must be his ministers who serve at his pleasure and assist him in the performance. The Council of Ministers is not responsible to the National Panchayat though the Ministers were to be appointed from among the members of the National Panchayat. The King is both the Head of the State and the Head of the Government. The Ministers come and go as and when it pleases the King. King

Mahendra was careful to limit the freedom of action of the Chairmen of the Council of Ministers and that of the Prime Ministers and to oust those who showed signs of developing other sources of support. Though the Supreme Court is the highest court of Nepal, it is not an independent body in the real sense of the term. The King is the guardian of the Constitution because the Constitution is the gift of the King to his subjects. In an emergency period in every democratic state, the Head of the State has the power to suspend most of the articles but not those dealing with the judiciary. But, according to this Constitution, the King can suspend the judiciary if he so desires.

The announcement of the Constitution of 1962 formalized the process of constitutionalizing personal rule. Its provisions and spirit echoed the Rana Prime Minister Padma Shamsher's Constitution. Like Padma Shamsher King Mahendra had denounced the party system and parliamentary system. The Constitution was silent regarding political parties in the initial stage, but the amendment of the Constitution in 1967 has prohibited them, affirmed the decentralization of power and accepted the total leadership of the Crown.

The King is in fact the source of all law and the Constitution. Monarchy has remained the single unifying and unchallenging factor. It is difficult to envisage a Nepal without a King. A partyless democratic Panchayat system with the King at the top is a political arrangement which the Nepalese can grasp easily. A Constitution is to be judged it has said, by the measure of contenment and happiness it provides for the people of a country apart from ensuring its integrity and security. In Nepal content-

ment and happiness are still far away.

When the Panchayat Constitution was introduced there was some gullible people who fell for it. They thought that the National Panchayat was a workable substitute for Parliament worthy of being given a trial. And it had by now a fairly long trial at the end of which these erstwhile supporters of the Panchayat Constitution have only turned sad, if not wise as well. The National Panchayat was never meant to be a forum for discussion of policy and ventilating public grivances as also an instrument for controlling the executive because of the dominance of the King who is the leader of the system.

It has been remarked by a foreign student of Nepalese politics, that : "The dominant political role of the monarch in Nepal was more than the sum total of King Mahendra's constitutional powers. Even more important perhaps was the skill with which he elaborated and manipulated the constitutional system. For example, lines of communication - a vital factor in any political system - were carefully canalised to flow through the palace ... ." Further, he says, "King Mahendra's shrewd insight, into the personalities of the cast of characters who played at court based politics was another important ingredient in his control over the system. He knew who had to be consulted and involved in the construction of a broad-based consensus on any specific issue as well as the price that had to be paid for their support. This may have been a politics of corruption, as his critics have charged, but it was minimal corruption in contemporary since there were usually more effective and persuasive

means available to extract compliance with the King's political and economic programme."[210]

210. Rose, op. cit., p. 1.

CHAPTER VI

A BRIEF ACCOUNT OF SOCIAL, ECONOMIC AND POLITICAL SCENCE FROM 1951-71 AND THE POSITION OF THE CROWN

(I)

Nepal is a land-locked Asian country. It has preserved ancient values of life which is accountable for the difficulty in pushing it forward to the modern way of life. Nepal is described as a 'Backward' or 'Underdeveloped' or 'Developing' nation. Now, the change of the terminology -- from 'backward' to 'Underdevelop' or 'developing nation' -- seems to have been made in response to the changing character of the nation in many respects. The majority of people in most of the developing countries of Asia and Africa exhibit social structure which have come to be called traditional or traditionalistic, in contrast to societies characterized as modern. In fact, the developing countries are feeling a strong want of adaptable, coherent political institutions, effective bureaucratic machinery, well organized political parties, a high degree of popular participation in public affairs, a working system of civilian control over the military, extensive activity by the government in the economy, and reasonably effective procedure of regulating succession and controlling political conflict. In fact, they suffer real shortage of food, literacy, education, wealth, income, health and productivity.[1]

1. Samul P. Huntington, Political Development in Changing Societies, New Haven and London, Yale University Printing, 1969, p. 2.

Nepal has a population of 11,558,983. The density of population, according to the Census figure, is 82.07 per square kilometre.[2] The eastern part is more thickly populated than the western. Population has been increasing at the rate of 2.07 per cent per annum.[3] The Terai covers an area of 8000 square miles. The majority live in hilly regions. This area covers almost 1.7 of the land and in some of the valley of which the Kathmandu Valley is the biggest one.[4]

Nepal is principally an agrarian country with about 93.5 per cent of her population engaged in agriculture. The rest is engaged in manufacturing, commerce, transport and communication and in government service. In some parts of the country, as in Terai, the percentage of the people engaged in agriculture is nearly 80 per cent. Out of the total of an approximate area of 54,362 square miles, nearly 1.4 per cent is under cultivation. Nepal is self-sufficient in food and its principal crops are rice, wheat, sugar, jute and other grains.[5] But Preliminary Report prepared for the Joint Project of the ILO and the Nepal Government through CEDA shows that 'in the hills and the Terai 77 lakhs of people live below the poverty line with income below Rs 1.35 a day'. The Report further states: 'the spurt in the Himalayan Kingdom and the trend in agriculture sector indicates that Nepal, which had a 3.4 million-ton surplus in the food grains in 1970-71 might show a definit by 1985-86 unless somethin

2. National Census Report released on July 24, 1973 by the Census Department, HMG/Nepal, Rising Nepal, Vol. VIII, No. 222, July 25, 1973.
3. Ibid.
4. Ibid.
5. Report of the Agriculture Department, HMG/Nepal, 1961.

is done about it.'[6]

Nepal's geographical position accounts, 'in a large measure, for prolonged isolation as well as the fact of the slow political process, economic immobility and social background.'[7] Moreover, under the feudal order, Nepal, not only upheld the interest of the privileged classes but kept the state underdeveloped and weak, the society conservative and orthodox, and the people ignorant and exploited.

Social Conditions :

The basic social structure and powerful hierarchy in Nepal exhibit different patterns. The ecology of the region seems to have played a significant role in determining the nature of communities. The fundamental units of the social order in the Nepalese communities are the fimilial and consanguineous groups, various castes and clans. The most difficult challenge before the new polity has been the arrangement of the power-structure of the society.

The Revolution of 1950 also worked in the direction of changes in Nepal. The Interim Government constitutionally guaranteed some rights, social religious and political to the

6. A Preliminary Report prepared for the Joint Project of the ILO and the Government of Nepal through CEDA, The Times of India, Vol. CXXXV, No. 136, May 19, 1973.
7. Anirudhra Gupta, Politics in Nepal : A Study of Post-Rana Political Development and Party Politics, (Bombay, 1964) p. 1.

people. In the eye of the law, all were declared equal. There would be no discrimination against any one on grounds of religion, race, caste, sex and place of birth. In fact, this was a great challenge to the traditional society. Though the Interim Government Act was implemented, the faith in the '<u>Nepalko Mulki Ain</u>' was not shaken and there was no change in the social order. So, some amendments were made in this Ain on the basis of the new system for social reforms. Later on, after 1963, the Panchayat polity aimed at an overwhelming change in the role of the individual in "a substance-based, tradition - bound and caste-ridden society, where the status and the role that an individual is destined to acquire and play are pre-determined by the accident of his birth in a given ethnic or caste group." The new system wanted the anti-progress and feudalistic society to develop a new outlook of life. King Mahendra promulgated the <u>New Civil Code</u> (Laws of the Realm) in 1963 in Nepal.[8] The Code drastically reformed the social hierarchy by abolishing the caste system that on grounds of ritual purity delegated groups and communities to superior or inferior positions. This Code has put an end to the practice of untouchability, Polygamy and Child marriage were prohibited, and for the first time, property right have been extended to women.[9] It is the boldest and most outstanding measure to have been taken so far in this traditional Hindu state.

These are the benefits from the Code. However, the

8. <u>The Panchayat Democracy</u> (Department of Information and Broadcasting, HMG/Nepal, 1970), pp. 48-49.
9. The Legal Code also prohibits all kinds of polygamy and allows inter-caste and inter-ethnic marriages.

Nepalese society is constituted in a way that it would not like to break its moral and customary laws. It will take time for the general mass to accept reform and to abandon the old traditions, usages and practices.

The King tried also to carry out certain social reforms. Notwithstanding their short-comings, could these could have had some effect on society. But in most cases they just remained on the statute book for want of social workers, and other reforms are either not introduced or are ignored for reason of the absence of public faith in these measures.

The political change in 1951 saw an awareness in people about the importance of education. The government, too, keenly felt the necessity of mass literacy. After 1951, many new schools and colleges were opened.[10] The National University was established in July 1955. These were the most tangible achievements during the post-revolution period.

The New Education Plan (National Education Plan) was introduced in 1971 in order to reform the existing educational system and to gear it to the development needs of the country.[11] This Plan was adopted by the government on the basis of a pro-

10. From 1957 to 1970 at least 7,256 Primary Schools, 1065 Secondary Schools, 40 Higher Institutions and a National University 'Tribhuban University' were established.- Lekha Nath Belbase, "A Glimpse of the National Education Plan" (Art.), Nepal Digest (Kathmandu, 1972), Vol. I, No. 6, April - May, 1972.

11. The New Education Plan was implemented from 1971. It was based on Fourth Five Year Plan. The New Education System shall cover the whole area within five years.

posal of the UNESCO. It is expected that the New Education Plan will record definite break with the traditional methods of education. Upon the successful implementation of the plan will depend the future of the country. The aims of the new plan are : to instil new ideas in students, to develop in them feelings of loyalty towards the country and the Crown and to give such education to them as will be useful to the social and economic development. To achieve these objectives, priority has been given to Vocational education along with reforms in the service conditions of teachers and in the preparation of text books. It seeks to replace the existing syllabus by a new system giving a technical bias to instruction in schools and colleges.[12] Though the idea is sound, it is being attacked by men with vested interests. The University turns out 3000 graduates annually and the schools 15000 boys and girls. Job opportunities have, however, failed to keep pace with the rapidly increasing output of the educational institutions as already stated above.

(II)

Economic Conditions :

The Revolution of 1950-51 changed the policy of the government, and drastic measures were taken towards planning social and economic development. However, since 1951, Nepal has come out of its isolation, and has been making efforts to

12. "Objects and Principles of New Education Plan", with reference to National Education System Plan for 1971-76, Nepal, Ministry of Education, HMG/Nepal, 1971 (Jana Sikchya Samagri Kendra, Kathmandu), pp. V-X.

increase its diplomatic and trade contacts with the outside world. It has accepted foreign aid programme in increasing size[13] and has simultaneously launched many development projects. After the establishment of a democratic type of government, Prime Minister M.P. Koirala proposed in 1953 A.D. (2010 V.S.) the constitution of a Planning Sub-Committee to devise ways and means to ensure coordinated development of the national economy.[1] But, even after 1951, economic development could not be smoothly achieved.[15] It was in 1956 that concrete steps were taken to frame and implement a development plan when a Royal Proclamation announced the First Five Year Plan of Nepal. Nepal has now the Fourth Five Year Plan in progress.

The First Five Year Plan (1956-60 A.D.) of Nepal envisaged a total expenditure of Rs 330 millions during the Five Year period and allocated resources to various sectors of economy. This plan gave priority to the development of agriculture and allied sectors. This plan imparted invaluable experience on planning, besides making the people Plan-conscious. It also highlighted the paramount need for establishing pre-conditions for the planned development of the economy.

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13. More than 50 per cent of Nepal's development budget is met out of foreign aid.
14. Badri Prasad Shrestha, An Introduction to Nepalese Economy, (Kathmandu, 1962), p. 248.
15. Nepal has one of the lowest proportions of internal resources used for development. Government's revenue constitutes less than 5 per cent of the Gross Domestic Product. Nepal is poorer than most countries in the world, with per capita income of less than US dollar 60 per year. According to the 1972 World Bank Almanac Nepal's Gross National Product increased only at a rate of 0.5 per cent per annum during the period between 1960 and 1970, while Nepal's population was growing at a rate of 1.8 per cent annually during the same period - Rishikesh Shah, "Political Development of Nepal" (Art.), reprint from IIR, Vol. 2, No. 2, April 1973, p. 59.

After the termination of the First Five Year Plan, a one year gap period was maintained in order to consolidate and collect scattered data, which were of vital importance for the formation of the succeeding plans.

The Second Five Year Plan (1962 - 65 A.D.) was eventually framed and implemented with effect from July 1962. The main objective of this plan was to create an atmosphere conganial to implementation of a comprehensive plan in the future. It was a preparatory plan. In fact, the Commission devoted mainly to preliminary works designed to create appropriate conditions for the smooth execution of a second plan. Nepal Three-Year Plan envisaged a total expenditure of Rs 600 million during the three year period and allocated resources to various sectors of economy. This plan laid emphasis on the collection of basic data on various aspects of the country's economy along with the development of economic infrastructure and organizational reforms. Achievements were made on the basis of the collection of the basic data on the indicators of economy like population Census and simple agricultural survey. To provide better incentives to the farmers, the land reform programme was launched. For transport development, initiative was started on the construction of the Mahendra Raj Marga (East-West High Way) and Sunauli - Pokhara High Way. A net-work of tele-communication system was created linking one part of the country with the other. 7,600 kw. of additional power was generated during this plan. The expenditure incurred during this plan period was Rs 596. 80 million. An additional amount of Rs 70 million was set aside as loan to the private sectors of which Rs 25 million were spent.

The Third Five Year Plan (1965-70 A.D.) was announced immediately after the termination of the Second Three Year Plan in July 1965. This plan envisaged a total expenditure of Rs 2500 million, including Rs 1740 million in the public sector, Rs 240 million in the panchayat sector and 250 million in private sector. The fundamental principle of this plan was based on the objects and principles of the social policy of the Constitution of Nepal 1962. The main object of this plan was intended for achieving an all-round economic development through decentralization of power and wider particpation of the masses at all levels of the Panchayats.

This plan was formulated with the long-term goal of doubling the national income in 15 years, envisaging its 19% increase of the during this Plan period. Top priority was given to the development of transport and communications sectors with the objectives of creating basic infrastructure for the accelerated growth of the national economy. Foodgrain production was increased by about 10% as against the target of 15% and 59,000 hectars of additional land was brought under irrigation. By the end of this plan period, power supply was increased by 19,960 km., of which 12,000 was generated from Trisuli Project, 4,470 kw from Hetauda Diesel Station and the remaining derived from Phokhara hydel - station, Patan and Biratnagar Diesel Stations. The expenditure incurred in the public sector during the Third Plan was Rs 1,779 millions.

In Nepal, at present, the current Plan, namely, the Fourth Plan (1970-75 A.D.) came into force from 1971. The Planning

Commission, which had drafted the Plan, submitted it for public discussion. Many suggestions were dealt with in the National Panchayat. The outlay of this Plan is 354.00 million. This plan is based on the Constitution of Nepal 1962. The objectives and policies of this plan are to achieve full employment, to ensure optimum standard of living and even to effect distribution of income and wealth in the community. Of the total outlay of ₨ 3,540 million, ₨ 2,550 million were set aside for public sector, ₨ 120 million for Panchayat sector and ₨ 870 million for private sector.[16]

If we go to by results so far achieved, even the most optimist mind has felt some reservation about them. Little has been done to raise the consumer's standards or to accelerate economic growth. Since the King's take over three plans have been formulated to improve the economy of the country. Though these three plans are but part of a long-term prespective planning, they are said to have been designed primarily for the creation of certain basic conditions essential for the introduction and smooth execution of a more comprehensive plan in future. In these three plans priority was given to Land Reform, Transport and communications, Industry and Education. But, progress in the agricultural sector is not satisfactory as production has not gone up. Land taxes have been enhanced for which the middle class is suffering. In the private sector Sugar Mills have been set-up in Biratnagar, Birgunj and Bahirahwa. Sugar produced in Nepal, for instance, is costlier due to shortage of canes. Similarly, Biscuit factory is not running well as the wheat quota for the factory

16. With reference to the data issued by the National Planning Commission of Nepal.

remains inadequate. The government has issued licence for cement factory in private sector but it could not run. Two-thirds of its capital is to come from Nepal Industrial Development Corporation (NIDC),[17] and the rest from private parties. Whatever is produced or manifactured in Nepal is dearer than their imported counterparts. Cigarette factories (Janakpur, Birgunj and Kathmandu) also are running at a loss. Other units built with the help of the Nepal Industrial Development Corporation (NIDC) are reported to fare no better. The Shoe Factories (Basbari and Patan) are also not in a good position.

The National Trading Limited is another organisation that looks after the trading side of the newly set-up establishment to sell goods cheaper to the consumer. But consumers are not satisfied with the functioning of this organisation.

The first Planning Commission was set up in 1951 under the Chairmanship of the Prime Minister with 31 members. Within one year, this Commission was replaced by a Planning Board with H.R.H. Prince Himalaya Bir Bickram Shah as its Chairman and other five members. In 1959, after the General Elections, a new Planning Board was constituted under the Chairmanship of Deputy Prime Minister, General Suverna Shamsher JBR with five more members. After his take over, King Mahendra formed a new Planning Board under his own Chairmanship with all the Cabinet members as its members, including one member-Secretary. In 1962, this Board was replaced by a new one with all the Cabinet Ministers as members and the Chairman of the Council of Ministers as its head. In

17. NIDC is a foreign aided organisation that finances and provides technical assistance to new enterprises.

1968, a new Planning Commission was instituted under the Chairmanship of the Prime Minister with full-time members, two ex-officio members and one member Secretary. Commenting on these frequent changes in the planning set-up The Motherland says:

> "One of the pre-requisities for the success of planning in stable growth, economic and political, in any country. But ironically a regular characteristic in this country has been the instability in the planning authority itself. Perhaps no country has seen so many changes in form in the planning body as this country has in so short a time. This had obvious telling effects on the formulation and implementation of policies, and one reason why planning has yet to show its miracle for us in the changes often made in the name of better planning."18

(III)

Political Conditions :

(A)

The end of the old prerogatives of the Ranas was followed by a representatives democratic government in Nepal in February 18, 1951 A.D. The role of political parties in a democratic government is necessary. It must firstly serve as a two-way communication channel organizing public opinion and voicing peoples' demands before the government simultaneously serving the purpose of mobilizing the masses for the broader aims of modernization. Secondly, it must be able to act as a major instrument for dealing with the problem of transferring power to people and inculcating correct political education in the people. Thirdly, if a party is to act as an agent of modernization, it must be staffed at least, at its upper level, by members of democratic elites. And finally, there must be some continuity in

18. "Planning" (Ed.), The Motherland (Daily), Kathmandu, May 29, 1968.

the task of party organisation which would outlast the party leader or its founder who first brings it to power.

Parties are 'associational groups' based on tribes, ethnic groups, and religious and class bodies. They have aims and goals, which are part of the basis for their support. But their strength also comes from the support of the communial groups in the polity, which may have created a party to protect themselves or to expand their influence. Bases and goals both help to describe the very essence and characteristics of parties. All these groups are, to a varying degree, involved in politics.[19]

A party can be strong in such circumstances if it has wide experience and leadership. The party structures are based on (i) internal structure, i.e., branches all over the country, (ii) external link, i.e., role of the party and the supporting groups, and (iii) pattern of leadership. Particularly in the emerging third world, the party system is still at the early stages of legitimation. And it is not surprising that parties are often weak to maintain the political system for long. Let us now judge on the basis of these points about the role of political parties from 1951 to uptil now for the constitutional development in Nepal.

Mass participation is vital for the success of a democratic government. By mass participation is meant the way people enthusiastically get themselves involved in national affairs. Nowhere it has been a free government without political parties. Government by free people is merely another name for democratic

19. Jean Blondel, Comparing Political System, Chap. Political System : Structure and Functions (London, 1973), pp. 83-84.

government. Political parties are indispensable for the successful working of modern democracy. The main object of the parties is to promote the interests of the people. The party system helps a person to see his way through a maze of policies and details. Parties help to make the government strong and stable, and in both parliamentary or non-parliamentary forms of democratic government, they help to make the voice of the electors articulate. The failure of the party system is partly a reflection on the people themselves. If the electorate is not intelligent, critical and discriminating, party dictatorship is inevitable. A party system is bound to fail if there is a lack of character among the politicians and the people at large.

The role of political parties in Nepal during 1951-71 is both interesting and patheatic. This chapter is largely concerned with the various conditions which gave rise to political parties, their performances, and the range of conditions that appeared to support the existing party patterns in Nepal.

There were numerous parties and political groups which grew up in Nepal during 1951-71. Before 1951, those parties which played a prominent role to dislodge the Ranas from power have already been discussed. Now, this Chapter deals with those parties which played a prominent role in the politics of Nepal after 1951-71. These were : Nepal Praja Parishad, Nepal Rastriya Congress, Nepali Congress, Nepal Communist Party, Nepal Rastravadi Gorkha Parishad, Terai Congress, Nepal Praja Party, Samyukta Prajatantra Party, Jana Congress and Nepal Prajatantrik Mahasabha.

About the organisation, functions and roles of Nepal Praja

Parishad, Nepal Rastriya Congress, Nepali Congress and Communist party of Nepal, much has been discussed in an earlier Chapter.[20]

The Praja Parishad went extinct after its conspiracy against the established government in 1940 came to the surface. However, its leader, T.P. Acharya, was made the ex-officio President of the Nepali Rastriya Congress, working in exile in India, to honour him while he was in Jail in Kathmandu. But after the revolution, the founder as well as the supporters of Praja Parishad claimed that, as the oldest party in Nepal it could not support Nepali Congress and would oppose the Delhi Compromise.[21] The party was revived by Tanka Prasad Acharya and his followers after the release of Acharya in 1951. The party manifesto declared that, "The party was to establish 'classless society' by ending all kinds of social and economic exploitation."[22] It was a relatively conservative body, advocating a strong central government, but through a democratic approach.[23] Later on Praja Parishad and Communist Party of Nepal forged an alliance and charged the Nepali Congress as a foreign agent.[24] On the other hand, the subversive activities of the Vir Gorkha Dal (Dkhukuri Dal)[25] spread unrest in Kathmandu. After the Communist Party was banned in 1952,[26] it

20. See: Supra, Chapter I, Section III- 'Personal and Group'.
21. Statement issued by T.P. Acharya after his release.
22. Nepal Praja Parishadko Goshanapatra (Lucknow, 1951).
23. Basil C. Hedrick and Anne K. Herdrick, Historical and Cultural Dictionary of Nepal, Historical and Cultural Dictionaries of Asia, No. 2 (INC, Metuchen, N.J. 1972), pp. 131-32.
24. People's Democratic Front was formed in 1951 between Praja Parishad and Nepal Communist Party to challenge the strong hold of Nepali Congress and to oppose Delhi Compromise.
25. This group was organised by the extremist section of Ranas who opposed Delhi Compromise and attempted to overthrow the Rana-Congress Government of 1951. Later on the Dal declared illegal in 1951 and its leaders were arrested.
26. The Party, attacked Monarchy, Delhi Compromise and supported Gorkha Dal's activities.

functioned more or less as a pressure group, aligning with one or the other, till 1954. In 1954 as a pressure group it found place in Matrika Prasad Koirala's Cabinet. In 1955, Praja Parishad, Jana Congress (formed by Badhrakali Misra after expulsion from Nepali Congress in 1952) and a faction of Rastriya Praja Party group merged and formed a new party, the Nepal Praja Parishad in the hope to form the Cabinet after M.P. Koirala.[27] Later on Tanka Prasad Acharya formed the government as the leader of Nepal Praja Parishad . The task it was entrusted with was to hold the general election in time which was announced by the King.[28] Some times later, Acharya pleaded for election to Parliament. He was one of the leaders who had brought confusion in this matter. Failing in its duty to hold the general election in time, the government was dismissed.[29] After the dismissal of the government, Praja Parishad was divided into two factions due to rivalries between B.K. Misra and T.P. Acharya in 1958. Both groups entered the General Elections in the name of Nepal Praja Parishad but each fared as badly as the other.[30] Ever since the formation of the United Democratic Party's government, other political parties were not satisfied with the intention of the King and on the attitude of his 'Direct Rule', three political parties, the Nepali Congress, the Nepali Rastriya Congress (D.R. Regmi group) and the Nepal Praja Parishad, decided to form a new organisation named 'The Democratic Front' to face 'dictatorial tendencies of the government, and to 'cope with the imminent danger to democracy and to protect the fundamental rights.[31] Then after the General

27. Grishma Bahadur Devakota, Nepalko Rajnaitika Darpan (Kathmandu 2016), pp. 8 and 27; Gupta, op. cit., p. 212.
28. Proclamations, op. cit., p. 194; Gorkhapatra, 55 (10 August, 1955) 1.
29. Ibid., p. 194.
30. See: The Party position in the General Election. See: Election Commission's Report, Appendix:15.

Election, the Acharya group joined the 'National Democratic Front' demanding re-election and appealed in the Supreme Court to declare the elections void. They started inciting the people to overthrow the ruling party. After 1960, when the King declared a state of emergency, dissolved the Parliament, dismissed Koirala's government and suspended fundamental rights. T.P. Acharya welcomed the King's action to suspend the fundamental rights guaranteed by the Constitution of the Kingdom of Nepal and the banning of the political parties on January 5, 1961. Praja Parishad's role was not satisfactory for the healthy establishment of a democratic system in Nepal.

The Nepal Rastriya Congress is led by D.R. Regmi. The party manifesto accepts 'a democratic government under the aegis of constitutional monarchy'.[32] The party believes in non-violent movement. The party had remained aloof during the time of revolution but later on after the revolution Regmi returned to Kathmandu with his followers with the slogan of non-violence. Dr. Regmi had only a limited number of followers and it was very difficult for him, therefore, to get important position in the government for a long time. In 1954 the Rastriya Congress joined the expanded Cabinet known as 'The National Cabinet', when the King reconstituted the Rastriya Praja Party Cabinet. Again in 1958 he became the member of the Council of Ministers in the National Cabinet to work for the election, to help the Draft Constitution Committee and to carry on the routine work of administration until the general election. The party supported the demand for election of the Constituent Assembly. Due to lack of funds and the absence

32. Nepali Rastriya Congress : Uddesh, Sanghatan ra Niti, Kathmandu, 1958. See: Devakota, op. cit., pp. 9-10.

of a political programme the party could not play an active role. But the party had played an important role in thwarting the Nepali Congress through its provocative writings. At the general election the party could not secure a single seat in the Parliament.[33] The party had also challenged the direct rule of the King and joined in 'The Democratic Front' in 1957 and also joined in the 'Disobedience Movement'. Though the party President, D.R. Regmi, welcomed the King's step to dismiss Koirala's government, yet he was not satisfied with the act of suspending fundamental rights. He is now engaged in social and cultural activities, aloof from the Panchayat activities, but many of his followers are at the head of government as ministers.

The development of the Nepali Congress after 1951 may be conveniently viewed in four distinct stages. First, from 1951 to 1955, when the party repeatedly suffered from factions and splits, and lost its predominant role in national politics. Secondly, from 1956 to 1959, which may be described as the stage of recovery when the Nepali Congress re-activated itself through agitational and mass movements.[34] The third stage began from May 1959 when the party formed the first elected government and made serious efforts to recast its shape and politics in line with the working of a parliamentary system of government. Lastly, the role of the party, when banned, to restore the parliamentary democracy in Nepal after 1960.

33. Sée: Election Commissioner's Report, 1959, Appendix. 15.
34. Nepali Congress alone was able to organize demonstrations, public meetings and Satyagrahas for democracy on a large scale from 1951 to 1959.

The Nepali Congress is a socialist party, having contact with every class of people. The party remains a pluralist party with a large and loosely-kint organisation in which various sectors and classes of the Nepalese society, representing the wealthy Ranas, big and small landowners, poor peasants, intelligentesia, students and small businessmen. The party manifesto declares : "The Congress stood for the establishment of a socialist society and a representative form of government with an elected Constituent Assembly and a constitutional monarchy."[35] The Nepali Congress heads the list of all the major parties in Nepal.

This party which had played the main role in the revolution suffered too many splits and dissensions during the period that ensued. There are mainly two reasons for this, first, its joining coalition government in 1951 with the Ranas, which left hostile impressions in the public mind, and then, it deviation from it on the line of election to the Constituent Assembly.

From 1951 to 1955, the party repeatedly suffered from factions and splits. The main reason being since the two Koirala brothers, M.P. Koirala and B.P. Koirala, spared with each other for power and leadership, M.P. Koirala became the right-hand man of King Tribhuvan. B.P. Koirala and his supporters charged M.P. Koirala with the responsibility for the organizational break-up.[36] B.P.

35. The Party Manifesto of the Nepal Congress, Birgunj Conference, pp. 6-7. See; Gupta, op. cit., Chap. VI, pp. 164-182.
36. Nepali Congress radical groups led by B.P. Koirala charged the Congress Government headed by M.P. Koirala that the government became more faction-ridden and less capable of dealing with the fast deteriorating political climate and totally failed to fulfill the tasks directed to by the King, viz., to ensure civil rights, to establish an independent judiciary, to recruit men in the public service on the basis of merit and to arrange for the holding of the general election for

(continued on next page)

Koirala charged M.P. Koirala with the responsibility for the weak position of the Nepali Congress. B.P. Koirala appealed to the members of the Council of Ministers headed by M.P. Koirala to resign from the Cabinet, and gave a list of names to be appointed in their place. But M.P. Koirala refused to accept the list and contended that the action of the Working Committee of the Nepali Congress was unwarranted and unconstitutional. He claimed that it was the right of the Prime Minister to select his team. Then the working committee send a mandate to M.P. Koirala to resign. Some members like Suvarna Shamsher, S.P. Upadhayay and Ganesh Man Singh decided to quit the Cabinet. But M.P. Koirala demanded that 'All Nepal Congress Committee should be convened to resolve the differences'. At last the party convention passed a vote of no-confidence against M.P. Koirala in August, 1952. He then formed a new party, 'The Rastriya Praja Party', with some of his followers and left the Nepali Congress.[37] Then he resigned from the government of Nepali Congress as well.

(Continued from previous page)
the Constituent Assembly, as far as possible, by the end of 1952. It was also not able to make any social and economic reforms. The Working Committee decided to reduce the size of the Cabinet in order to check the resurgence of conservative and revivalist elements in the Nepali Society. But M.P. Koirala maintained that he would fully abide by the established traditions and could not introduce social reforms during the interim period. On the question to reduce the size of the Cabinet, he asserted that the Prime Minister alone was responsible.

37. All Nepal Congress Committee was held at Bisalnagar Durbar, Kathmandu, 6 August, 1952; Gupta, op. cit., pp. 73-75.

Secondly, 1956 to 1959 was the period of recovery through mass movement and agitation for Constituent Assembly, an independent judiciary and general elections. With this began the period of conflict between the King and the Nepali Congress.[38] Finally, the Nepali Congress decided to give up its former stand and agreed to participate in the election for parliament.[39]

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38. Nepali Congress believes in constitutional monarchy. The party had reiterated its demand many times for an elected Constituent Assembly in view of the Proclamation of King Tribhuvan in 1951. Secondly, the party demanded the fulfilment of the Delhi-Compromise about the election. Thirdly, formed like the Democratic League, The United Front, to safeguard the fundamental rights, formation of an independent judiciary, to restore the suspended acts relating to the judiciary. Fourthly, the party demanded to form a government of a democratic party or parties and denounced the direct rule of the King (1951-58). Fifthly, the party was successful to organize mass agitation, Satyagraha, non-violence movement, Disobedience movement etc. Sixthly, the party's role after the general elections was based on the idea of socialism.

    Though Nepali Congress was not in a good position, the party had accepted the Constitution for Parliament given by the King. In this matter Nepali Congress had loosed its stand.

39. In the Seventh General Conference of the Party at Kathmandu on May 8, 1960, Prime Minister B.P. Koirala in his Presidental address had laid heavy emphasis on three main points, among which one was about the Constitution of the Kingdom of Nepal. In his speech, he said; "The 1959 Constitution was not completely democratic but was the best possible under the circumstances... ."

    - Kalpana, Daily, Kathmandu, May 9, 1960; B.L. Joshi and Leo E. Rose, Democratic Innovations in Nepal: A Case Study of Political Acculturation, (Berkeley, 1966), p. 340.

The Nepali Congress succeeded in winning the general election,[40] and formed the government which remained in office for eighteen months. During this period it had no mear achievements to its credit. But the obscurantist elements and the King did not take favourably to the government from the very beginning.[41] Baral has observed,

> "Political modernity, building up an effective modern economic system, strengthening of democratic institutions and the vision of structuring a new egalitarian society always remained the basic goals of the Nepali Congress."[42]

On 15th December, 1960, King Mahendra dismissed the Nepali Congress government, dissolved the Parliament, suspended fundamental rights and arrested the leaders of the party.[43]

Lastly, after 1960 the banned political parties under the supervision of Nepali Congress (except the Communist party) assembled at Patna and passed a resolution criticising and condemning the King's actions and decided to launch a mass movement to restore parliamentary democracy.[44] The movement started in the various parts of the country[45] but later on in 1968 it was called off and the Nepali Congress decided once again to cooperate with the King.[46]

40. See: Election Commission's Report, Appendix 15.
41. Supra, Chapter IV, "Position of Koirala's Cabinet".
42. L.S. Baral, "Nepal's Apprenticeship in Democracy 1951-60" (Art. India Quarterly, (New Delhi), July-September 1971, p. 200.
43. Supra, Chapter V.
44. On January 26, 1961, at a meeting of 39 out of the 101 members of the dissolved parliament at Patna (Bihar) under the Chairmanship of the General Suvarna Shamsher it was decided to launch armed movement if the parliament was not restored or B.P. Koirala was not released - Press Statement of General Suvarna Shamsher, Statesman, Calcutta, January 27, 1961.
45. See: Infra, f.n. 82 of this Chapter.
46. Press Statement of the Acting President of Nepali Congress, General Suvarna Shamsher, Press release, Nepal Today, (Calcutta), Vol. 7, No. 12, May 15, 1968.

The Nepal Communist Party was founded in India in 1949. Gupta has said: "Inspired by the Indian Communists, the young intellectuals soon came to believe that a class struggle in Nepal was imminent and that some foreign 'imperalists' powers conspiriggx with the Ranas to convert their country into a military base." Follwwing the tactical line of the Indian Communist party towards the "Collaborationist" character of Indian national leadership, they also feared that the free government of India was harbouring expensionist designst Nepal."[47] The new party set before itself the task of organizing Nepalese peasants and workers into militant bodies and starting a 'peace movement' in Nepal.

The main objective of this party was to solve the outstanding political, social and economic problems of the masses. The party manifesto declares : "The government would be a government of 'democratic parties', groups and individuals, representing workers, peasants, the middle classes and national capatalists who stand for genuine industrialization and for freedom and independence of the Kingdom of Nepal." In the foreign and home policy, the Communist Party of Nepal attacked American infiltration, military alliance and the test of Atom-Hydrogen Bombs and other nuclear weapons. It was against Gorkha recruiting, unequal trade pact with India and it supported Panch Sheel.[48] The party, later on, joined in the Revolution of 1950-51.

47. Jatiya Andolanma Nepal Kamyunist Party; Devakota, op. cit., p. 22, Gupta, op. cit., pp. 199-200; Bhola Chatterji, A Study of Recent Nepalese Politics, (Calcutta, 1967), pp. 53, 108 and 154.
48. The Party Manifesto of the Communist Party of Nepal, 1959, Headquarter of the Communist Party of Nepal, Publicity Section, Kathmandu.

After 1951, the party was against Monarchy, attacked Delhi-compromise as betrayal, and charged Nepali Congress leadership with serving as a clique of the 'national-Capitalist bourgeisie' composed of Suvarna Shamsher - B.P. Koirala Group.'[49] Then, the Nepal Communist Party and the Praja Parishad jointly formed 'People's Democratic Front' to charge the government for following a short-sighted policy and dubbed Congressmen as foreign agents. It attacked King's personal rule and appealed to intellectuals, peasants, workers and small businessmen, to fight the feudal regime headed by the King and replace it by a republican constitution to be framed by an elected Constituent Assembly. The party's attitude was to create unrest in the country through agitation, revolt etc. The party had supported Gorkha Dal's policy of violence and political disorder and opposition to Delhi-Compromise. Thus, the Communist Party's attitude compelled the then government to ban it in 1953. Consequently the party began to function underground and in a secret meeting adopted a new line. But by the end of 1956, the slogan given by the party had failed to impress the masses. Then the party declared itself in favour of monarchical system and constitutional rule. Tanka Prasad, who had formed the National United Front in 1952, lifted the four-year old ban on the Communist Party in 1956. Later on, the Communist Party of Nepal was divided into two camps, Pro-Russian and Pro-Chinese.[50] The party fought the general elections of 1959 and secured only four seats for the lower house of the Parliament.[51]

49. Gupta, op. cit., p. 201.
50. Dr. Keshar Rayamahi and Puspa Lal Groups.
51. See: The Election Commission's Report, Appendix: 15.

After King's take over in 1960, both the Pro-Russian and Pro-Chinese factions of the Communist Party condemned the King's action and demanded the release of political leaders summoning of the Parliament and restoration of the fundamental rights.[52] On one side, the Communist Party of Nepal working from India has condemns the King and stands for Nepal's democracy.[53] But on the other side the Communists are actively participating in the Panchayat system.[54]

After the democratic set up in Nepal, a powerful section of Ranas and their followers formed the 'Vir Gorkha Dal' as a nationalist party in 1951. They condemned Delhi-Compromise and foreign interference and opposed the political change in Nepal.

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52. On December 24, 1960, a cyclostyled Press Note was distributed ostensibly in the name of the Communist Party demanding the cessation of "Military Terror" and the reconveing of Parliament. Later on, the Central Committee approved the resolution in its entirety except the reconveing of the Parliament, thus implying acceptance of the new regime. - Kalpana, January 25, 1961; Joshi & Rose, op. cit., p. 450.
53. The extremist group led by Puspa Lal adopted a programme in its Third Conference held in 1968. It was (a) to overthrow the monarchy and establish people's republic; (b) to accelerate all the inherent contradictions of the Panchayat System and build a broad based movement for the masses from below; (c) to distribute land to the tillers and collectivize farming; (d) to have no truck with any feudal section and finally (e) to wage armed struggle to achieve above aims. - Resolution of the Third Conference of the Communist Party of Nepal 1968 (Cyclostyled copy).
54. B.N. Schoenfield expressing his opinion on the ban on political parties says that 'the results of the first National Panchayat elections show that 60% of its 125 members are ex-politicians. It is estimated that 35% are the members of the banned Nepali Congress and 25% are the members of banned Communist Party-of-Nepal. - B.N. Schoenfield, "Nepal's Constitution : Model 1962" (Art.), Indian Journal of Political Science, Vol. 24, 1963, p. 336.

The main object of this party was to create political disorder in Nepal and to seize power by violent means. The party workers with the help of Khukuri created havoc in the main streets of the capital and tried to assindte the then Home Minister, B.P. Koirala at his residence. But the Dal miserably failed in its objects. The party was banned and the leaders of the party were arrested.

In 1952, the Gorkha Dal emerged with the name of Gorkha Parishad. This party was represented by the extremist section of the Ranas and their minions. The party could not grow into a national party and its influence remained confined to the pro-Rana groups within the Kathmandu valley and in the hilly regions.

"The Gorkha Parishad, therefore, may be described as an organisation in which the ranks and the leaders belonged to two distinct sectors of society."[55] This party was totally controlled by the top leaders of the party, and other members, including the executive committee, had to follow the orders of the top leaders. In fact, the party represented anti-Congress elements. Most of the followers of the party were former Rana heads, feudals and their henchmen.

The party adopted a manifesto which stated that it was formed "to save the country from armed upheavals on one hand and near dictatorship of the party in power, on the other." The party claimed nationalism to be an inborn quality of the Nepalese and, as such, the Gurkha Parishad was a 'party of nationalism.'[56] Again the party emphasised the point that it had full faith in the

55. Gupta, op. cit., p. 189.
56. Manifesto and Programme of Nepal Rastravadi Gorkha Parishad (Allahabad), 3 and 8.

growth of an efficient monarchical system and envisaged the establishment of a responsible government, an independent judiciary and a unified administrative system with provisions for local autonomy.[57] The party demanded elections for the Parliament. After the 1959 elections it became the second largest party in the House of Representatives (Parliament) and played the role of the opposition party in the Parliament of Nepal. This party had secured 19 seats, mainly representating feudal interest.[58]

After 1960, some leaders of the Parishad (President Randhir Subba, Mrigendra Shamsher and some others) condemned Koirala Government and welcomed King's action, in dissolving his government. But Bharat Shamsher and some others differed with them. Bharat Shamsher was arrested but later on released. He moved to India, condemned the King's action and joined in the anti-King movement launched by the Nepali Congress along with his followers and demanded the release of B.P. Koirala and charged King Mahendra as an agent of China.[59] His attitude has so far remained unchanged.

The Nepal Terai-Congress was formed in 1951 by a section of the Terai people. In fact, this party was formed on a regional basis to promote the cause of the people of Terai. In trying to

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57. Nepal Rastravadi Gorkha Parishadko Gosanapatra, Kathmandu, 1956, pp. 4-5.
58. See Election Commission's Report, Appendix:
59. In a Press Conference in New Delhi, General Secretary of the banned Gorkha Parishad, Bharat Shamsher, had denounced the royal regime and declared to cooperate with the Nepali Congress in a joint movement to overthrow King Mahendra's direct regime. Later on, he announced the merger of the Gorkha Parishad with the Nepali Congress. - Nepal Today, Calcutta, Vol. I, No. 3, January 2, 1962, p. 23.
   Then, Bharat Shamsher was made incharge of operation in the Western Nepal when Nepali Congress launched an armed movement.

establish its own 'Autonomous Terai State', the party lost national and broad-based international support and came to be considered as a "sepratist" force.[60]

The founder of this party was Vedanada Jha. This party did not secure a single seat in the Parliament in 1959.[61] The leader of the party welcomed the action of the King in 1960. He was later on appointed a minister and then became the Chairman of the Administrative reorganization Committee.

The spilit between the members of the Nepali Congress that divided the party into two groups has already been discussed. Former Prime Minister M.P. Koirala formed the Rastriya Praja Party in 1953 and another group led by B.K. Misra came to be known as the Jana Congress. The Rastriya Praja Party was invited to form the Cabinet on June 15, 1953. During the Prime Ministership of M.P. Koirala, the powers of the judiciary were reduced and powers were restored to the Crown. When King Tribhuvan was taken ill, the Chairman of the Regency Council, Crown Prince Mahendra with a new order which vested in him all royal powers, dismissed the government of M.P. Koirala on March 2, 1955, on the ground that 'four years of democracy had brought no good to the country.'[62]

Dr. K.I. Singh had played an important role during the Revolution of 1950-51. He had not accepted the Delhi-Compromise and charged the Nepali Congress with 'dishonourable role'.[63] He

60. Herdick, op. cit., p. 117.
61. See Election Commission's Report, Appendix:15.
62. Gupta, op. cit., p. 94.
63. Dr. K.I. Singh, the western Commander of the armed revolution, refused to accept the cease-fire order of the President of the Nepali Congress and continued the armed struggle with about 358 Mukti Sena followers. When the situation in Western Terai began to deteriorate by the joint military operation
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attempted an unsuccessful coup in 1952 in Kathmandu. He failed in his attempt[64] and fled the country to China and was declared a 'national trator'. But in 1955, September, he returned to Kathmandu and was granted Royal pardon. Then he formed a political party named 'Samukta Prajatantra Party' and became a sworn enemy of the Nepali Congress.

The party manifesto gave more emphasis "on a system of government in which the King occupied the highest authority with a Cabinet to work under him and to remain responsible to an elected Parliament."[65] The party favoured election to the Parliament and not to the Constituent Assembly. He remarked that, 'the Interim Constitution which had promised to give the people an elected Constituent Assembly was fit to be thrown into 'a waste paper basket.'[66] Then he was asked by the King to hold the general

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of the Indian and Nepalese troops, the situation was brought under control. K.I. Singh and his followers were arrested and lodged in the Bhairawa Jail from where he made his dramatic escape but later on he was arrested and brought to Kathmandu.

64. On January 22, 1952, Dr. K.I. Singh who was in a Prison, managed to escape, launched an attack with the help of at least 1200 Rakshya Dal men and seized the Durbar Secretariat, the treasury, the arsenal, the airport and the broadcasting station. Then, he presented a five point programme to King Tribhuvan. The five points are: (1) establishment of an all party representatives government; (2) convening of a conference of all political parties to outline a programme for action for the government; (3) preparation of a five year development plan with the cooperation of all political parties; (4) establishment of friendly and equal relations with all neighbouring countries; and (5) performance of all actions peacefully.- Devakota, op. cit., p. 63.
His programme was rejected by the King and he was dubbed as 'National Traitor', A State of emergency was declared. The state army crushed his coup. But K.I. Singh with some of the followers was successful in fleeing the country to China via Tibet.- Joshi and Rose, op. cit., p. 100; Gupta, op. cit., pp. 69-70.

65. Samuktya Prajatantra Party Nepal ko Gosanapatra (Pashupati Press, Kathmandu), 4. See: Gupta, op. cit., p. 197.

66. Samutya Prayas, June 25, 1957.

elections. He was unable to hold the elections as these were postponed by the King. The attitude of the ministry towards important sections of the society and also towards other political parties was vindictive. It had also antagonised powerful Rana army generals. On 14th November 1957 K.I. Singh was suddenly and unexpectedly dismissed by the King. The reasons for the dismissal have never been made clear. Dr. K.I. Singh's party never had much public support. In the 1959 elections it got only four seats.[67] After 1960 K.I. Singh supported the King's action. But when he was offered the Chairmanship of the Standing Committee of the Raj Sabha in 1963 he did not accept it. He opposed the newly established Panchayat System and was imprisoned. But after a few months he was released and he changed his political stand. In 1970 he was elected to the National Panchayat.

Nepal Prajatantrika Mahasabha was founded in 1957 by Ranganath Sharma, an old member of Prachanda Gorkha of 1931. But this party had little impact on Nepalese political life. The basic principles of this party were "the establishment of constitutional rule under the Crown, proper utilization of national resources and a fully independent policy.[68] The party was not popular among the masses so this party could not secure a single seat in the House of Representatives though it had set up candidates in 68 constituencies.[69] After 1960, the party welcomed the King's action and had condemned the Koirala government as a corrupt government. Mr. Ranganath Sharma joined the Acharya government in his individual capacity. Later on, he was appointed the Chairman of the Standing Committee of Raj Sabha for two consecutive terms.

67. See Election Commission's Report, Appendix: 15.
68. Prajatantrika Mahasabhako Goshanapatra, 30 August, 1957.
69. See Election Commission's Report, Appendix:

The Jana Congress of B.K. Misra was a factional group which had separated from the Nepali Congress in 1952. Later on it joined the Praja Parishad of T.P. Acharya in 1955. But Misra broke away from the Praja Parishad in August 1958. His group entered the election in 1958 but fared badly.

The various parties and party leaders from 1951-60 may be said to be working for the establishment of democracy under the aegis of constitutional monarchy. The main object of the Delhi-Compromise was to establish democracy in Nepal and to draft a Constitution by the Constituent Assembly which would establish democracy under the aegis of the monarchy. This could not fulfilled by the intra and extra fight among the political parties themselves. From 1951-60 many new parties formed and may old ones dis integrated as a result of personal ambitious on the part of their leaders.

From 1951-60, at least seven Cabinets of various parties were formed. Main reason of confusion in Nepal politics was caused by the absence of broadly based national political organisations. The parties which were formed after 1951 were neither strong nor fully supported by the general mass because they had already created confusion among the general mass of the people. The people of Nepal could not get convincing leadership. The leaders as well as parties generally acted in a manner so as to destroy the very non-political character of the Crown. It became the most powerful political force in the country due to the mistake of party leaders. In the absence of the political parties and their leaders to provide stable government and to tackle properly the multifarious problems faced by Nepal it was natural that the Crown

should gradually assert itself and emerge as the symbol of unity.

(B)

King Mahendra in exercise of his emergency powers on the ground of preserving the 'unity, national inegrity and sovereignty' of the country dismissed the first-ever elected government, dissolved both houses of Parliament, suspended certain clauses of the Constitution,[70] declared a State of emergency and imprisoned Prime Minister, B.P. Koirala, and several of his colleagues (Dec. 15, 1960). The King assumed the administration of the country in his own hands. Parliamentary system of government was overthrown.

However, King Mahendra was conspicuously silent about his future plan, but on January 5, 1961, he expressed his desire to 'open a new spring of power which will nourish the mentality and fruitfullness of democracy rooted in our soil and suited to our conditions.' He added:

> "Since Panchayats are the basis of democracy and democratic system imposed from above has proved unsuitable, as is apparent from the present experience of the country, we have now to build democracy gradually layer by layer from the bottom upwards."[71]

Strong reaction was aroused not only in Nepal but also in other parts of the democratic world and the step of King Mahendra was denounced as 'power hunger'.[72] But some minor party leaders of

70. Suspended clauses of the Constitution of the Kingdom of Nepal were all the provisions of Part 2, Part 3, Part 4 except Article XI, Part 5 except Article LV, Chapter 3 of Part 9 except Article LXXIII and Part 10.
71. Proclamations, Speeches and Messages: H.M. King Mahendra, Vol. II, (Kathmandu, 1967), p. 9.
72. Most of the leaders of the world and Newspapers in their Editorials and article-columns had expressed regret at this development. Pt. Jawahar Lal Nehru, Prime Minister of India condemned King's action. The Socialist Party of India passed a resolution and condemned King's take over. Labour Party of U.K., International Socialist Organisation and other democratic leaders were shocked at this step and passed (continued on next page)

Nepal supported the reversal of democratic process[73] and some considered it a 'new revolution' in the history of Nepal.[74] It came to be said that 'the two hands of Mother Nepal are Monarchy and Democracy.'[75] Moreover, some even welcomed the King's action of suspending the fundamental rights guaranteed by the Constitution.[76] The struggle for power by the political parties and small groups who had no popular support and therefore no faith in elections became the main sources of power of the King and helped him to become an absolute political force in Nepal. As a result it was not difficult for the King to ban activities of political parties and to rule according to his own will. Now it was made easy for the King to manoeuvre the scene in favour of launching a system that would suit his interests. In this period, the feudals, royalists, frustrated political leaders and other interested groups were busy canvassing and propogating against the Nepali Congress.

(continued from previous page) resolutions demanding the release of the deposed Prime Minister and other leaders. See: A.S. Bhasin, Documents on Nepal's Relations with India and China 1949-66 (New Delhi, 1970),(Speeches in Lok Sabha and Rajya Sabha, December 16 and 20), pp. 51-56; Manchester Guardian (London), January 11, 1961; Asian Recorder; The Observer (London) and The Times of India. (New Delhi)

73. President of the United Democratic Party instructed all its branches to fully support all actions taken by the King. D.R. Regmi, T.P. Acharya, R.N. Sharma, Mrigendra Shamsher of Nepali National Congress, Praja Parishad (Acharya group), Nepal Prajatantrika Mahasabha and Rastrabadi Gorkha Parishad supported the King for 'democratic traditions' and 'principles'. See: Naya Samaj (Kathmandu), 25 December, 1960.
74. Nepal Samachar, Daily (Kathmandu), 5 January, 1961.
75. The Swatantra Samachar Daily (Kathmandu), 5 January, 1961.
76. T.P. Acharya was the only former Prime Minister who had welcomed and issued a statement supporting King's action on suspension of fundamental rights as 'the right process'.

At that time, it was very difficult for the supporters of the Nepali Congress in Nepal to launch a movement against the King when repression was the order of the day.

Following Royal take over the King formed a Council of Ministers under his Chairmanship which was predominantly made up by the old party members, who only a little time back, had advocated the conveining of a Constituent Assembly and the continuense of the Parliamentary system[77] and had compared the King with Caligulla and Nero.[78] However, King Mahendra called them 'honest youngmen endowed with national outlook and progressive mentality'. He assigned them the role of idealizing the political institutions established by the change in 1960.

A section of political leaders who had fled to India assembled at the Indian border to decide the course of action necessary for the restoration of parliamentary democracy in Nepal.[79] They passed a resolution that the Parliament be convened otherwise threatened to launch an armed movement and also demanded the release of the deposed Prime Minister, B.P. Koirala and other leaders immediately. Later on, the Nepali Congress organised anti-Mahendra movement from its base of exile in India. Then, the Government of Nepal

77. Dr. Tulsi Giri, R.K. Shah and Viswabandhu Thapa who had advocated for the Constituent Assembly and Parliament. Later on they denounced Parliamentary system and joined the King's Panchayat System.
78. Dr. Tulsi Giri had compared King Mahendra with Caligulla and Nero in one of his articles. See: Nepal Pukar.
79. On January 26, 1961, at a meeting of 39 members the dissolved Parliament held in Patna under the Chairmanship of the former Deputy Prime Minister of the Koirala Cabinet, General Suvarna Shamsher a resolution was passed for the renewal of the Parliament. See: The Statesman (Calcutta), January 27, 1961.

appealed to all the Nepalese political leaders and workers who were in India to return to their homeland and engage themselves in Nation building activities.[80] When they refused to accept the proposal of the government, their property was confiscated, and they were charged as 'anti-national' and their trial in absentia was held.[81] Consequently there was disturbance in the various parts of the country and even an abortive attempt on the life of King was made.[82]

King Mahendra was sure enough to get cooperation from the erstwhile opponents of the dissolved Koirala government. Despite the criticism levelled against his action by diverse sections of the public opinion within and without the country, he confidently moved to stabilize his regime by pursuing a variety of courses for eliminating the opposition. The first phase of royal consolidation could be understood under the (i) institution of monarchy; (ii) traditional structure of Nepali society; (iii) neo-geographical reality and (iv) the personality 'Charisma' of King Mahendra himself. He toured the country for gaining support from the Nepalese people. He visited many foreign countries to convince them of the need and worth of his action. By the end of

80. Press Note issued by His Majesty's Government under Special situation Act 1960.
81. Most of the self-exiled leaders of various political parties were imprisoned by the decision of a Special Court in their absentia and their moveable and immovable property was seized on the charge of 'loot and murder of innocent Nepalese'. See: The Times of India (New Delhi), April 2, 1962.
82. Most of the disturbed parts of the country were Illam, Dhankuta, Okheldunga, Dailikh, Sallyan, Bharatnagar, Taplegunj, Lamjung, Bajang, Dang, Peuthan, Gulmi, Rahuthat and Bharatpur. On January 22, 1962, even an abortive attempt on the life of the King was made at Janakpur.

1960, it seemed that there was no force to rise up to the challenge of the King. When the King proclaimed the dissolution of the democratically elected government by a single stroke, no one raised his voice but for a few politically conscious former party-workers. It looked like a 'despotism with consent'.[83] Nepalese politiciams organised anti-Mahendra movement from their base of exile in India. By the end of 1961 frequent raids of hit and run character were made across the border into Nepal. But these steps were inadequate to compel the King to restore parliamentary government in Nepal. The King enjoys in Nepal since the history of the Gorkha dynasty sovereign power on the basis of victory and submission of the people. So any attempt to subvert sovereign power of the King would be interpreted as a reballion against the real sovereignty of the nation.

The Sino-Indian border clash of 1962 came in the mean time which helped the King to tide over difficulties from the activities of the exiles as India tried to placate Nepal by discouraging the rebels. The Sino-India clash gave opportunity to the King to consolidate the Panchayat system. China had warned India indirectly not to interfere in the internal affairs of neighbouring countries. [84]When there was war between India and China, the insurrection movement launched by the exiled leaders was suspended.[85] In

83. Narendra Goyal, Politics of the Himalayan States, (New Delhi) 1969), p. 93.
84. Chen Yi promise October, 1962.
85. The Acting President of the banned Nepali Congress issued a statement from Calcutta suspending the movement, as he feared that a situation had arisen that might endanger Nepal's sovereignty. He stated: "Nepal is very much in the area of conflict, and a false step at this juncture might jeopardize the future of our country. We do not want the people's democratic movement in Nepal to be an excuse for the King to compromise our country's independence, sovereignty or territorial integrity". - The Statesman (Calcutta), October 25, 1962. See: R.S. Chauhan, The Political Development in Nepal (New Delhi, 1971), pp. 189-90.

the meantime, King Mahendra gave the Panchayat Constitution of Nepal in the last month of 1962. Though the insurrection movement was suspended yet Nepali Congress and the Communist Party of Nepal demanded reforms in the Panchayat System and attacked King's autocratic attitude and the defects of the Panchayat Constitution through pamphlets and periodicals like the Nepal Today, Tarun, Communist Party ko Bulletins etc.

An attempt was made by the Indian Government to restore cordial relations with Nepal which had been strained at this time through emissaries like Ex-ambassador Bhagwan Sahai and the then Home Minister of India Sri Lal Bahadur Sastri. The Acting President of Nepali Congress, Suvarna Shamsher, issued a statement on May 15, 1968 "extending cooperation" of the party to the working of the present constitution of Nepal "in the earnest hope of its further development" under guidance of the King.[86] After six months on October 22, 1968, King Mahendra released the former Prime Minister, B.P. Koirala, Ganesh Man Singh and other leaders of the Nepali Congress, and the Royal pardon was granted to General Suvarna Shamsher and others who had taken refuse in India. Then Nepali Congress Executive issued directives to all the members who had been recently granted amnesty to proceed to their respective districts immediately.[87] But some members like Bharat Shamsher opposed the decision of the executive Committee.

86. '<u>Nepali Congress offers cooperation</u>', Suvarna Shamsher, the Acting President of the Nepali Congress had issued a statement on May 15, 1968. <u>Nepal Today</u>, Vol. 7, No. 12, May 15, 1968, p. 1311.

87. Directives issued by Nepali Congress to all the members, <u>Nepal Today</u>, Vol. 8, No. 1, December 1, 1968, p. 1431. Only 22 exiled leaders had been granted amnesty, while there were about 700 leaders and workers living in exile in Calcutta and other places yet to be pardoned.

In this Chapter, the role of the opposition outside the Panchayat System has been discussed. Now, it is necessary to discuss the rise of oppositional trends inside the Panchayat System after 1960.

(C)

Opposition trend in the Panchayat System :

The new Constitution promulgated by King Mahendra on December 16, 1962 began the present Partyless Panchayat Democratic System. An elaborate herarchy of Panchayats was formed but the fact formlized the process of constitutionalizing personal rule of the King. King Mahendra had advocated the Panchayat System and had emphasised the basic principle that :

> "Under the Panchayat System, the people will be associated with administration at all levels and decentralized administrative system will be established through delegation of powers level by level. This system will lay the great responsibility for national construction on the people in general, not in any particular party or group of individuals."[88]

But the Panchayat System has neither been able to fulfil the King's desire nor its own basic principle within these twelve years.

In Nepal, the type of opposition in this partyless system that emerged following the coup in 1960 was very interesting. The type of opposition that was carried from across the Indian border by the Nepali Congress and the Communist Party led by extremist Puspa Lal could be found nearer to 'Contestation' or what Gordon H. Skilling termed 'Integral opposition'. It is anti-system and a total opposition to the existing political institution. However,

88. Proclamations, op. cit., p. 135.

the oppositional trends within the system itself also developed in Nepal and it was more or less peaceful or incremental. In fact, the type of opposition of 1960 was neither Constitutional nor 'a constitutional but non-responsible opposition',[89] but opposition having multiple characteristics.

King Mahendra's direct rule wanted to bring uniformity or homogeneity by reducing the difference. It was not possible due to the inception of a new political model amidst bitterness and suspecion or fear. The King's search for legitimacy through the innovation of a political institution based on 'tradition' and custom also became the source of criticism. Further, the contradictions in the polity developed gradually, and the members of the one time royal entourage also started to turn into critics of King Mahendra's political ideology.[90] In the beginning, Dr. Tulsi Giri and R.K. Shah were at logger heads and subsequently Shah was dropped from the government. Later Dr. Giri also resigned on the ground of his alleged 'difference of opinion' with the King regarding the position and functions of the Chairman of the Council of Ministers.[91] R.K. Shah from the beginning was never a

89. Govanni Sartori, "Opposition and Control : Problems and Prospects", Government and Opposition, Vol. I, No. 2 (London, 1966), pp. 150-51.
90. When the contradictions and criticisms began in the Panchayat System, then King Mahendra asked 'the National Panchayat whether Panchayat Democracy, which has been introduced on an experimental basis, should finally be accepted or not.' The National Panchayat requested the King 'to accept the new political order in view of its suitability to the country.' Now the role of the King becomes much clear and he has succeeding in extending his control over the system.
91. Dr. Tulsi Giri resigned on January 27, 1965 owing to differences with the King over the interpretation of the Constitution, particularly its provisions relating to the Chairman's functions. It was learnt that the difference between Giri and King Mahendra arose when the latter attempted to exercise his control over the decision-making process as well as implementation of the affairs concerning his portfolios. Chauhan, op. cit., p. 226.

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critic of monarchy and had opposed a 'monopoly of patriorism' posture and had expressed that he would not like to brand some people as natt-national.[92] Again there was an exchange of words between Giri and Shah on the question of constitutional reforms.[92] Dr. Tulsi Giri who had advocated for the Panchayat System and the Constitution of 1962, later on while addressing a session of the Kabhrepalanchock District Assembly, said:

> "Political activity in Nepal had naturally been restricted to drawing room because it was not allowed to conduct openly and, in addition, because the proceedings of the National Panchayat were left secret."[94]

Another pillar of the Panchayat system, Viswabandhu Thapa who became the Chairman of the National Panchayat and later on became one of the Vice-Chairmen of the Council of Ministers after 1960, eventually went to the extent of demanding the revival of political parties and attacked the Panchayat system. He said :

> "It is not the Panchayat system but bureaucracy, which is in power today. The Panchayat System cannot continue for long in such a situation. He also demanded the release of political prisoners, and advocated full powers for Class Organisations and their "full participation" in political activities."[95]

Dr. K.I. Singh who was critical of the Nepali Congress and had supported King's action of 1960 unconditionally, resigned as the Chairman of the Standing Committee of Raj Sabha complaining that

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92. Nepal Press Digest, Vol. 9, No. 4, 1965, p. 19.
93. Ibid., Vol. 13, No. 29, July 20, 1969.
R.K. Shah and other 10 members of National Panchayat had appealed to the King for reforms in the Panchayat system and had submitted a memorandum. They had issued a joint statement on September 28, 1968. See Appendix:
94. Janmabhumi Weekly (Kathmandu), February 16, 1966.
95. Ibid., February 17, 1966.

'the Chairman of the Standing Committee of the Council of State should occupy higher position than the Chairman of the Council of Ministers.'[96] Later on Dr. K.I. Singh challenged and opposed the very form of the Panchayat System. He drew special attention to "the atrocities committed by the police and the military, the hollowness of the prevailing Panchayat System, the all-prevading corruption, the iniquitous tax-system, the false claims of development and the burning patriotism of the so-called rebels."[97] Dr. Singh was sentenced to two years' imprisonment and fined Rs 2000/- on charge of inciting the people against the present regime. Former Prime Minister Surya Bahadur Thapa had also called "for the formation of a fully responsible government, opening of the National Panchayat session to the Press and the general public, broadening of the electroal base, end of dual administration, ban on the involvement of Royal Palace officials and His Majesty's Government officials in the country's politics and provisions whereunder people can express their grievances in a non-violent manner."[98] Other leaders of the banned political parties like M.P. Koirala, T.P. Acharya, D.R. Regmi and S.P. Upadhdyay, and Kesharjung Rayamaji had demanded reforms in the Panchayat System. Except M.P. Koirala, T.P. Acharya and D.R. Regmi, most of the leaders of the banned political parties and royal entourage who had originals hate for the Panchayat System but were critical of the existing Panchayat System and had demanded reforms in it were imprisoned.

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96. Joshi and Rose, op. cit., p. 438.
97. Nepal Today (Calcutta), Vol. 3, No. 21, October 1, 1964, p. 434
98. The Motherland, Daily (Kathmandu), May 14, 1972.

After his release, the former Prime Minister, B.P. Koirala had expressed his readiness to cooperate with the King and to bring normally in the administration of Nepal.[99] But some days later, he expressed dissatisfaction with the prevailing political, economic and social conditions and said:

> "I have not been able to understand the spirit of the present constitution. I am eager to learn His Majesty's intention behind the Constitution. If my aims and those of His Majesty are the same, there is no need for any Constitution."[100]

The Communist Party of Nepal (Puspa Lal Group) attacked the Panchayat System :

> "In spite of the propoganda that the Panchayat System is in conformity with the national tradition of Nepal and that it trains the people in the spirit of democracy from the very bottom, the Panchayat System, in essence, turned out to be the dictatorial rule of the King, the leader of the feudal class."[101]

But there were others on the other end who were not in favour of changing the election system. For example, Dr. Tulsi Giri pleaded that 'in case the system of direct elections on the basis of adult franchise was introduced, the condition of partyless would be pitiable.'[102] He was commenting on the opinion of the then Home and Panchayat Minister Sailendra Kumar Upadhyaya who had advocated to broaden the election system in Nepal under the Panchayat System.

Moreover, the political model itself became the subject of much controversy. The assumption of power had been justified

99. Press release from Kathmandu after his release on October 22, 1968.
100. Nepal Times, February 7, 1969.
101. Resolution approved by the Third Conference by the Communist Party of Nepal, May 1968 at Vanarasi, See: f.n. 53.
102. Nepal Press Digest, Kathmandu, Vol. 14, pp. 274-77.

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on the ground that the existing system had broken down. Hence it became apparent that the former party workers themselves became the critics of the government thereby giving rise to doubt regarding the rationale of the 'fundamentals' of the Panchayat System. Even some of the King's advisers had already turned into critics, and showed overt and covert preferences for the general political trends in the country.

In the domestic front, the media of mass communication were completely controlled and restricted by the government. Beside structural devices adopted by King Mahendra to discourage oppositional policies within the Panchayat polity, his regime waged multi-pronged attack to eliminate anti-Panchayat opinions in the country. A number of legal and extra-legal measures were adopted that prescribed, intimidated and oppressed the opposition.[103]

In fact, Panchayat system could not create open society and encourage people to embrace it with enthusiasm so that it could be made more effective. But the entire means of communications between the polity and the society were monopolized and the government conveyed to the people unilaterally the programme of the royal regime. Thus, even those who were participating in this system were not satisfied with the existing policy of the system.

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103. To meet the challange of the outlawed political parties and other dissatisfied elements to the regime a number of legal and extra legal measures were adopted. For Examples: Rastriya Niredeshan Ain 1961; General Security Act, 1961; Security Act 1961; Anti-Corruption Act; Special Situation Act, 1962; Rashitriya Samhad Samiti Act; Organisations and Associations (Control) Act, 1962; Raj Kaj (Aparadh ra Sajaya) Ain, 2019; Press and Publication Act, 1963, etc., are important.

(IV)

Factors Responsible for the Success of Monarchy 1951-71 :

Before considering in detail the factors contributing to the success of monarchy between 1951-71, it is essential to evaluate the role played by different agencies engaged in bringing about the revolution of 1950-51 which ultimately brought to an end a century old Rana family autocracy and liberated both the King and the country from political supression and multisided exploitation. Right from the beginning of the Rana Regime to their final annihilation in 1951, intrigues and plots were the agencies to subvort the Rana supremacy. In spite of Jang Bahadur's efforts to win the support of what had remained of the families of Thapas, Pandes, Basnayats after the Kot massacre through marriages, grants of tax-free lands, and offering of services in civil and military administrative ranks, the fire of hatred and revenge in the hearts of these families had never subsided and they had always been looking for an opportunity to associate themselves with anti-Rana elements and to effect an overthrow of the Rana regime. In this effort they joined hands with those of the Ranas whose dissatisfaction ranged due to their low positions on the roll of succession because of their junior position in the family by axident of birth, the caste of their mothers, the pressure from different quarters of the family of the ruling Rana to bring changes in the theory of the line of succession from time to time, and other such reasons which adversely affected their interest. Though the Ranas at the top of the leadership of the family strove by all means the continuation of the family rule, these dissident Ranas even favoured the destruction of the system if in any way it helped to lead them

towards the achievement of their ambitious goal.

The third and by no means a less vital force which was deeply sore at the manner in which Jang Bahadur had taken into his hands the full reins of administration of the country by using deception and force; by throwing dust into the eyes of the then Shah monarch King Rajendra and his Junior Queen Laxmi Devi which ultimately compelled them to take refuge in Banaras and thus reducing the King to a nominal identity. This kept ablaze a deep-rooted sense of hatred and revenge in the hearts of the Shah Kings who always nurtured a secret design to overthrow the Ranas and recapture their lost power and restore their grip over the country's administrative machinery. The Ranas, too, apprehended in them a potential danger to their regime.

To envolvement of King Tribhuvan with the political moves of the Praja Parishad, though originally motivated by his strong anti-Rana feeling was the first sign which suggests the unity of purpose between the people and the King had already pronounced the end of the Rana rule and the inauguration of a democratic system of government as its avowed objectives. The attempt of the then Prime Minister Juddha Shamsher retaliatory move to depose King Tribhuvan and to instal Crown Prince Mahendra, failed due to total refusal of the latter to take the place of his father, and the interference of the British Minister to Kathmandu, who foresaw a great uprising in the country following the execution of thé plot, which might, in its turn, affect the smooth recruitment of the Gorkha soldiers in Nepal for the British army, had its far-reaching effect on the revolutionary forces which were gaining grounds both inside and outside the country. This also

brought King Tribhuvan nearer to the Nepali Congress by far the biggest, the most effective and popular political organisation in the country, and, as such, when the Rana Prime Minister allowed him to make unofficial visits to India in 1944 and 1946, he made contacts with its leaders, who were then active in the cities of Calcutta and Banaras formulating a plan for the final overthrow of the Rana regime. In this way the Nepali Congress got blessings and support of the King.

The years that followed were years of quick and speedy developments in which the Ranas and the opposition forces were naturally involved. The Ranas had ominous apprehensions equally both about the King and the Nepali Congress. But because of the King's being within their jurisdiction, they were more vigilant as regards his activities than they could be towards the Nepali Congress which was working from outside Nepal. Immediately after the efforts of the Nepali Congress to organise a military coup in September 1950 came to the surface, Prime Minister Mohan Shamsher planned to depose King Tribhuvan on the plea of his supposed involvement in the Nepali Congress plot. This time, too, King Mahendra's (then the Crown Prince) refusal to agree to the throne at the cost of his father delayed the Prime Minister's action, who then as the last resort decided to replace King Tribhuvan by his second grandson Prince Gyanendra, and depose the rest of the Royal Family members, including King Tribhuvan to Gorkha, the district from where the Shah dynasty had originally come.

But even before Mohan Shamsher's decision could materialise the Nepali Congress entrenched itself in Bairganiya, a border

town in India, and prepared for an armed revolution against the Ranas. In the meantime, in Kathmandu, there ensued a major battle of words between King Tribhuvan and Prime Minister Mohan Shamsher over the former's refusal to put the Royal Seal to the order for the execution of ten persons alledgedly involved in the efforts of 1950 September, army coup. And when the King, however, did not consent for the use of his Lal Mohar, Mohan Shamsher decided to go ahead with the execution (even without the use of Lal-Mohar), this the King resented and protested against it. This action endeared King Tribhuvan to the hearts of his people who come to look upon him as their liberator and leader.

King Tribhuvan was secretly in regular personal contact with the Indian Prime Minister Jawahar Lal Nehru. It seems that the plan of King Tribhuvan's flight to the Indian Embassy on the morning of November 6 was planned. The news of King Tribhuvan's entry to the Indian Embassy and then his flight to New Delhi spread like wild fire and the anti-Rana forces appeared on the scene everywhere in the country with a revolutionary surge.

The Rana's failed to secure King Tribhuvan back from the Indian Embassy in Kathmandu and to prevent him from flying over to New Delhi, and again to get Prince Gyanendra, whom they had installed on the throne, recognised as the King of Nepal, in place of King Tribhuvan, by the United States and the United Kingdom. India emphatetically supported King Tribhuvan as the rightful monarch of Nepal. The Rana realised that they must come to some sort of an agreement with the King. Such an agreement could only be based on the basis of the recognition by the Ranas of the political primacy of the King. The King on account of his

opposition to the Rana rule and his success in it naturally came to be regarded as the liberator of the people. He was acclaimed as the Father of the Nation and the Founder of Democracy in Nepal.'

King Mahendra came to the throne in 1955. One thing remains certain that he was strongly critical of democratic experiment in Nepal from the very beginning. This becomes evident from his public statement of July 1951, his Proclamation as the Crown Prince on Febraary 18, 1951 his statement on Nepal Radio on the fourth anniversary of the introduction of democracy, and his various speeches and statements after his assuming full Royal powers. On all these occasions he tried his utmost to belittle the achievements, and magnify to the highest magnitude the shortcomings and loopholes of the post-revolution governments. Thus, his intentions for future action after his accession could be easily quessed. The intramural confusion of political parties and the cheap politics of Kathmandu, which led to the appointment and dismissal of Cabinets one after the other, created a situation under which any kind of prediction about the future prospect of any political party in a general election - if held - could not be made. An impression had been created in King Mahendra's mind that the leading political party, the Nepali Congress, had no ground to stand anywhere if general elections were held. The presumed failure of any political party to command an absolute majority in the Parliament would pave way for his personal rule. But the results of the elections proved otherwise and the Nepali Congress emerged as the party commanding the majority in the Parliament. The party got a mandate from the people to govern the land. Quite opposed to the Palace-oriented governments, which

formation of its government not on the strength of King's pleasure or support but of the electorate had ended an era in which the King was the sovereign in the real sense of the term and had begun a new phase in Nepalese politics in which the Prime Minister derived his power from the people not from the King. As such, there was bound to be clash between the young King and the young Prime Minister. B.P. Koirala emerged as a political personality whose effectiveness and popularity was on rapid increase. It seemed that the image created by King Tribhuvan for himself as the pioneer of liberty and democracy would not be of any use to King Mahendra. He needed supporters from the Prime Minister's circle. The Nepali Congress had made the mistake of including in its ministry faceless men like Dr. Tulsi Giri and Vishwabandhu Thapa, who were to betray it for the sake of their personal aggrandisement.

Karl Marx has said somewhere that the most decisive role in a revolution is that to be played by the middle class. The Rana rule was so ruthless in economic exploitation and political suppression that it did not give the society the chance for the emergence of a middle class. In the Indian freedom struggle persons belonging to this class had played the most significant role in leading the revolution and in bringing about social changes. But in Nepal there was no such politically conscious class, which could act as an agency for political and social change. This factor also contributed its due share towards strengthening the King's power after the Royal "coup".

During the long suppression of the Rana regime, the people

had from time to time been compelled to leave the country for India. It was there that they got their education in western type schools and colleges and in due course came in contact with Indian national leaders. Some of them even went to jail for actively participating in the Indian freedom struggle. It was these people who took the lead in dislodging the Ranas from power and eventually on returning to Nepal they got the top positions following the revolution. But this advantageous position of theirs was viewed with grudge by another set of freedom-fighters whose field of activities had been confined within the country, more particularly within Kathmandu. They claimed that their sufferings in the Rana jail for long years under inhuman conditions entitled them to those important positions which had been acquired by the former group. Their failure in this respect made them to support the King and the Royal regime. This also accounts for the consolidation of the Royal power.

The Nepali rebels who had fled Nepal to India, after the 1960 coup, would have succeeded in overthrowing King Mahendra's government if Sino-Indian armed conflict would not have taken place. It was only then that the Indian Government was obliged to ban any action against Nepal from the Indian soil. Besides this, the exposition of inferiority of the Indian military strength gave an opportunity to King Mahendra to adopt pro-China stance and to get assurance and favours to his advantage from India. The danger from China has made India indifferent to any ideological or political injustice in Nepal, and it is thus that the present King also does not see the possibility of any pressure from India for the revival of parliamentary democracy in

Nepal.

The last factor contributing to the King's position is the fact of the dependence on the monarchy of the various interest groups for their own ends. Most of these, like bodies of journalists, students, various Social and Cultural fronts, trade-unions, etc., have hardly any impressive record to their credit.

After the Royal Coup of 1960 and the introduction of the Panchayat system, new interest groups have sprung up. These are political institutions in the shape of Class Organisation, which are optional for political parties. Former political partymen have joined them, and it is an open secret that they work on party-limes. This has divided internally all the Class Organisations into different factions. Oddly enough, the Royalists and the Communists get special preference from the government primarily to suppress the other factions. This situation has made the Class Organisations completely unworkable and inactive. With the only exception of Women's Organisation and that too in Kathmandu, the rest of the Class Organisations exist only on the paper, having no programme. None of the Class Organisations has any root in the soil. And they are tools in the hands of the ministers and Anchaladishes for personal gain. These organisations are busy with back-biting and casting aspersions on one other and, as such, they have neither time nor the stamina to think anything on national basis. The best thing that these Organisations care to do is to subserve the interest of the King.

CONCLUSIONS

Nepal had adopted an isolationist policy till 1950. Owing to geographical factors and to hopelessly meagre communication facilities, its people were divided into different linguistic groups with their own social, cultural and economic pockets. Nepalese culture remained unintegrated and the contact of these different groups with the centre was almost non-existent. Kathmandu alone remained the centre of development, and nothing worthwhile marked the economic development of the country.

Inter-action between Political Forces and Constitutional Apparatus

The country before and during the Rana period remained out off from the rest of the world. Its being land-locked further heightened this situation. It was part of the policy of both the Shah and Rana rulers, particularly of the latter, to keep the country in a state of isolation. With the consequence that it remained in blissful ignorance. The number of the privileged was few. They were conservative in attitude and were socially and politically influential. If people of Kathmandu valley and some parts of the Terai became politically conscious, it was mainly due to the impact of court politics at the centre and to the proximity with India. From the point of view of its basic social structure and power hierarchy the Nepalese society brings in bold relief three different patterns. The ecology of the region seems to have played a significant part in influencing the social

fabric of the communities therein. The roots of the social order in national communities are the familial and consanguineous groups, castes, and clans. These are the various factors - physical and social - that determine the life style of a people and their beliefs and value-system and also their social and political culture. The role of institutions and groups can also not be minimised. The political behaviour of an individual is determined to a great extent by the culture dominating his life. It also depends upon sociological and psychological factors. Their shape is based on the theory of 'determinate behaviour', organization and predisposition. Thus the system of norms are shared by the members of the society for 'preservation and proscription'. The strongest influence for socialization in a state, are, cultural norms, i.e., religion, ethnic and class perceptions and attitude. Family traditions count much for moulding the patterns of social behaviour. The character of a society derives much from what are called 'filial or familial' affilations.

From the beginning Nepal's economy had remained backward due to the exploitative policy of its rulers. Besides that, the country's isolation kept it away from modern influences. Because of the 'traditional' or 'deliberate' policy of the government, the country remained in isolation and seclusion from the rest of the world. The country did not have a planned economic policy. If authority ever decided on some reforms, it was due to socio-economic, religious or political compulsions. But the priestly class, the administrators, and military oligarchs, who were in the corridors of power, always put a brake on reform measures in consideration of their vested interests. Thus the authority sought

to devise as many safeguards as possible for the continuation of family rule. In this way, through the affiliations of strong groups (Nobles and Bharadars), a person was made to obey the authority. The dominent courtiers occupied top positions in the Royal Court. From the very beginning of the Shah period there always remained a wide gap between the isolated self-sufficient and self-sustaining villages, on the one hand, and the urban areas, on the other, which were the centre of administration, pilgrimage, commerce and the few existing industries. Such a gap checked the political development of Nepal and people were exploited by the authoritarian hierarchy.

People Vs Traditional Conservatism (Shah hegemony and Rana Autocracy) :

The organization of the government before 1948 can be divided into two periods : (i) Shah hegemony and (ii) Rana autocracy. Both were remarkably similar in their spirit, and derived sustenance from centuries old traditions, usages and practices. The government was supposed to follow the rules of King-craft and administration prescribed by the old texts such as the Manusmiriti, etc. Thus the government more or less agreed with several basic ingredients of the traditional Hindu polity. Not surprisingly the Kings and Rulers became autocratic, with all powers centralized in their hands. These features have been obvious during the periods Shah hegemony and Rana autocracy alike. The administrative system, in which the supreme authority of the state lay in the Shah rulers, recognized them as the "Law-givers". But in the period of Rajendra Bikram Shah, Bhimsen Thapa, emerged as the strongest

man of the Kingdom and dominated politics for the next thirty years (1806 - 37). He established a political system in which the monarch was reduced to a mere figure-head, while all real power belonged to the Prime Minister.[1] Bhimsen Thapa had also evolved many new rules and regulations in the system. He had established the tradition of "a reigning King and a ruling Minister" for a period of thirty years.[2]

Under the Rana administrative system power was solely vested with the Rana Prime Minister, even though in theory it might have been said that the administration was run with the approval of the King.[3] In the reign of King Surendra, the Rana Prime Minister, Maharaja Jang Bahadur, codified the laws, which were published under the name of '<u>Nepal ko Mulki Ain</u>'. These were based on traditional usages and practices of an autocratic order. Though at times the Rana system attempted to introduce some administrative reforms, yet there was no change in the socio-political conditions of the country. The system was based on the might of the army and the Ranas claimed it to be a dyarchy. Thus, modern Nepal's political system remained as it had been when Prithivi Narayan Shah had captured power and the country was condemned to remain in isolation. The character of the government remained what it had been originally, i.e., an autocracy.

1. Anirudhra Gupta, <u>Politics in Nepal : A Study of Post-Rana Political Development and Party Politics</u>, (Bombay, 1964), pp. 8 and 9.
2. Chittaranjan Nepali, <u>Bhimsen Thapa ra Tatkalin Nepal</u>, (Kathmandu, 2013), p. 15.
3. Maharaja Padma Shansher's Inaugural Speech of 26 January, 1948 inaugurating the "Government of Nepal Act 2004 V.S." <u>Gorkhapatra</u>, Vol. 47, No. 117, p. 1; Amos J. Peaslee, <u>Constitutions of Nations</u>, (Washington, 1948), p. 505.

Jean Blondel has said of the traditional conservative systems:

> "Traditional conservative system can be found only in polities in which the state developed very slowly, often through processes of annexation of tribes or ethnic groups."

He further says,

> "Traditional conservative systems are conservative and very authoritarian, and they have a low level of popular participation. This is because the main structures on which they are based are the communal groups - tribal, ethnic, and religious - that have existed in the region for long periods."4

In a conservative system political growth is bound to be slow. Previously such systems depended on an annextion of tribes or ethnic groups and when this process stopped the growth of the state remained static. Pye has remarked that :

> "Political development means primarily the requisite political environment essential for economic and individual development."5

But the Nepalese system did not create the required political environment, hence no political development took place. As a natural consequence thereof, social, economic and political policy remained static in Nepal in a general sense. But at the same time it can not be denied that the ruling class played a role in the process of modernizing Nepal. For two centuries, there was a wide clevage between the isolated, self-sufficient and self-sustaining villages, on the one hand, and the urban areas, on the other. The ruling class turned its attention to the establishment of administrative framework and military strength only.

Political leadership in underdeveloped Africa and Asia

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4. Jean Blondel, Comparing Political System, Chap. 9 "Traditional Conservative System", (London, 1973), pp. 156-57.
5. Lucian W. Pye and Sidny Verba, Political Culture and Political Development, (Princeton, 1972) (Second Printing), p. 12.

assumes that a ruler's first desire is to retain his position at the apex of government while others press to displace him. The Ruler's Imperative asks one positioned at the apex, what must a ruler do to remain in power and pursue more effectively the nation building goals he sets for himself and his polity. How can he act to extend and consolidate a supporting coalition built out of the main components of administrative and political power in his country.[6]

The reasons for the failure of various governments till 1948 were that they were corrupt and they refused to take the people into their confidence. They did not educate the people nor did they provide the common man with opportunity of life's minimum. A few, therefore, argue that the traditional rulers failed because they lacked a proper political vision. They neither tried to form a party in support of their regime nor did they form an economic background for their regime. The only aim of the ruling group was to keep its power intact, not to share it with any other group or agencies and the best means for this purpose were to keep the country in isolation and the people in political backwardness.

The government before 1948 was a highly personalized executive body. Monarchy was paid nominal loyalty. The selection and policy of ministers (Thar Ghars) and the structure and the role of the Court (Bharadars) had no need of winning the King's acceptance. The interaction between the political forces and the constitutional apparatus began after 1930. So the major test for the

6. W. Howard Wriggns, The Rulers Imperative (Review of the Book), (New York, 1969).

traditional Nepalese system came when new groups and elites in the form of modern middle class and intellectual groups and elites in developed much more flexible political organizations which sought to widen the scope of social, religious, economic and political participation. Internal factors were not conducive to political growth. On the other hand, the impact of the external forces, and 'people's force' or opposition forces', which were outside Nepal, compelled the government for constitutional development in the country. Thus, political change in the Asian Sub-continent influenced Nepalese political system. It opened a new door for constitutional change, for strengthening the institutions and for creating a new order.

The first written constitution by and large reflected the urge and aspirations of the people for a better government in the country. Prime Minister Padma Shansher confessed, when he uttered these words :

> "... It would be a great help towards the progress of the country if an arrangement could be made to associate the people even more closely than at present with the government, as is the practice in the greater part of the world today."[7]

Though the Constitution of 1948 was promulgated in January 1948, it was implemented after more than two years. The Constitution guaranteed and shielded the office of the Prime Minister and made it the very foundation of the entire political system. The Constitutional structure was fully controlled by the Rana Prime Minister and the articles of the Constitution could be invoked

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7. Maharaja Padma Shamsher's Inaugural Speech, op. cit., Gorkhapatra, p. 1; Peaslee, op. cit., p. 506.

and when he so desired. The purpose of the Constitution was 'to perpetuate the traditional Rana polity under the leadership of the Rana Prime Minister.'

Period of Confusion 1951 - 60 :

Inspite of this Constitution the Rana system came to an end in 1951. The fall of the Rana autocracy can be attributed to four main factors : (1) Conflict between the King and the Rana family was inherent in the dichotomy of their respective structural positions and functional rules; (2) divisions within the Rana family members regarding the question of the role of succession among the three categories 'A', 'B' and 'C' (family oligarchy); (3) combination of certain traditional forces, namely, the King and 'C' class Ranas and the modern force like the Nepali Congress and (4) the withdrawal of the British from India.[8] In fact, the failure of Rana autocracy was due to political forces or the environmental factors.

After the 'Revolution of 1951', a democratic type of government was installed for the first time by Royal Proclamation. A new Constitution defining the relations between the government and the governed and the various organs of the government was framed. The objective of 'the Revolution' was to establish a democratic government under constitutional monarchy. The Constitution in fact was a model of gap-arrangement, but the interim period lingered beyond the time when it was supposed to end. As a result the King acquired more and more powers. For this purpose

8. S.D. Muni, "The Dynamics of Political Change in Nepal" (Art.), South Asian Studies, Biannual Journal of South Asia Studies Centre, (Department of Political Science, University of Rajasthan, Jaipur) Vol. VII, No. 1, January 1973, p. 9.

a number of amendments were made which altered the very spirit of the original document. On January 20, 1954 the King declared:

> "It has been established tradition and practice in Our country since the time of My August forefathers that by virtue of the inherent sovereignty and the Royal prerogatives, the supreme executive, judicial and legislative authority vests in the Sovereign. For some time this authority was, in accordance with the delegation made by some of Our distinguished predecessors, exercised by their Prime Ministers. This delegation was, by virtue of Our Proclamation of 7th Falgoon, 2007, revoked whereby the supreme authority in all the spheres vests solely in Us."[9]

The period from 1951 to 1959 witnessed a period of political confusion. No government remained in office for more than nine months. This political situation indicated the beginning of a new phase in the Nepalese politics. The interim arrangement gave rise to powerful vested interests which sought to prepetuate the fluid situation. Between these elements and the political parties was the monarch who emerged as the strongest political force in the country. Political leaders wanted to share in political power by manoeuvering for the favour of the King. The demand for the election to a Constituent Assembly began to die away. Leaders gave a poor account of themselves. The Crown used this opportunity to acquire to itself the power and position of the pre-1769. The King was interested both in being the constitutional or de jure head of state and the de facto sovereign. Thus the Delhi-Compromise or Settlement for Constituent Assembly was dropped. Between 1951 and 1958 the immaturity of party leaders and their efforts to carry favour with the King at the cost of their rivals encouraged the King to promote dissessions among the leaders and to consolidate his power. By 1959 the political parties had become

9. Royal Proclamation of King Tribhuvan Vir Bikram Shah Deva, Nepal Gazette, Vol. 3, No. 26.

so weak that they had to accept a constitution given by the King, which gave him more powers and privileges and which limited the rights of the people.

In February, 1959 King Mahendra gave what was called the "Constitution of the Kingdom of Nepal" with full sovereignty vested in the Crown and with its special prerogatives over the three organs of government. But on the other hand it also established a full-fledged parliamentary government, responsible to the elected lower house. The Constitution laid down that the Prime Minister was to be a man who enjoyed the confidence of the majority of the elected representatives. But the Constitution clearly indicated that 'though the Prime Minister was the leader of the majority party, conscious of his leadership in the government and among the people, the sovereign power was vested in the King.' The people, who suffered much because of the machination of political parties, gave their mandate for political stability, in the hope of winning fundamental rights. The Constitution was intended to safeguard the highest interests of the country and the people's rights. The instability which marked the preceding ten years would now come to an end with the formation of the new government. In this way "the Constitution of 1959 presented a 'Synthesis' to the "antithetical" and simultaneous growth of the King and modern elites."[10] Thus, the Constitution by creating "two loci of power" contained within itself the seeds of its destruction from the very beginning.

The elections which followed resulted in the victory of the

10. Muni, op. cit., p. 17.

Nepali Congress, which formed the Government.

"Parliamentary democracy was indeed institutionalized", as L.S. Baral says,

> "but those who had been inveterate enemies of the Nepali Congress and were defeated at the election made the tenure of its government, set up in June 1959 for a five-year term, extremely precarious and vulnerable. Parliamentary democracy had very insecure foundations."11

The new system lasted for about eighteen months only.

> "... In December 1960, the valley rang with another sword thrust. With one stroke of a royal decree, King Mahendra Bir Bikram Shah Deva cut through the tangled web of parliamentary democracy that he said was unsuited to Nepal's political climate. Assuming all power he promised a Nepalese form of democracy that would make the country bloom."12

Role of Political Parties :

There are many reasons for the failure of parliamentary system in Nepal. First, people remained passive. The main reason for this being that they were driven by blind-belief. Traditional elements who were thoroughly conservative in their attitude and who controlled the economy of the country challenged the forces of modernisation. Secondly, the army was not loyal to the government. Most of the key-posts in the government were under the control of the royalists. There was restriction on the mass communication media. The legislature was dissolved, fundamental rights were suspended and political parties were banned. After

11. L.S. Baral, "Nepal's Apprenticeship in Democracy 1951-60", (Art.), India Quarterly, July-September 1971, p. 193.
12. J. Anthony Lukas, "Nepal : "Democracy" with an Absolute Monarch", (Editorial), New York Times, October 27, 1966.

the King's action, popular leaders were in jail, and could not mobilize the people. There was 'maverick', no leader to lead the country. There were a superfluous number of parties and political groups, with mutual hostilities among them on personal level rather than on the basis of their ideologies. The political parties from the very beginning, were ridden with factions, and they lacked the capacity to inspire the people with democratic ideals. The parties were forgetful of their main objective of strengthening the political system. The non-congress leaders were not in favour of democracy either because of their personal jealousy towards the Congress party. Thus they supported the King's action and surrendered their rights. Added to that, obscuranist elements also scrambled for power side by side with political groups and personalities. The leaders of the political parties did not hesitate to surrender their political rights to the Crown, which, in its own way, was using every opportunity to consolidate its own personal interest. The country turned away from democracy, Kathmandu became the chess-board of political game. The leaders vied with each other to placate the King for the sake of personal aggrandisment. The idea of holding elections to a Constituent Assembly was given up merely for the sake of power. Naturally, the public grew apathetic towards the political parties, as a credibility gap had come to exist between them. In fact, mass participation is one of the most vital points for the success of a democratic government. A free government cannot exist in the absence of political parties. Political parties are considered to be indispensable for the successful working of modern democracy. The party system helps a person to see his way through conflicting policies dotted with intricate details. Parties help to make

the government strong and stable, and in both parliamentary and non-parliamentary forms of government, they help to make the opinions of the electorate articulate. If the people are not intelligent and of a critical bent of mind, 'party dictatorship' or personal rule is inevitable. A party system is bound to fail if there is lack of character among the politicians as well as the people. In Nepal leaders could not create a high degree of public morality. Parties became more cliques corrupting the public and eating into the vitals of the country. The parties organized after 1951 were neither well-kint nor based on mass support. They created confusion and ultimately lost in popular estimation. The leaders could not be as persuasive and convincing as they should have been. The leaders surrendered their powers one by one to the King. Immaturity of the political parties and apathy of the people resulted in the end of parliamentary system in Nepal.

Thirdly, the attitude of the elites represented a 'dual policy', viz., (1) traditional norms-behaviour and (2) progressive-attitude. Thus, the neo-traditionalists and the elites demanded many innovations to be made in the administrative set up. It is always risky for the claimants to demand democratic right to represent the masses in the absence of a popular instrument for the assessement of things.

Restoration of Royal absolutism :

Monarchy has occupied the central position since the time of Prithivinarayan Shah. Kingship is so deeply rooted in the soil of Nepal that the King and the country are regarded almost

identical entity. The general public never questioned the intention of the authority at the top. The rulers (Shahs, Ranas and Shahs) were always certain that they would get cooperation from everywhere. Why the people remained passive spectators? The main reason should be traced to the fact that the institution of monarchy became the central and the most revered institution in the history of Nepal.

The Panchayat Constitution :

After the experiment with the Parliamentary system was over, the King decided to be the real sovereign, to reign as well as to rule. He created the "Panchayat System" which, he declared, 'suited the genius of the country and the people.'

King Mahendra gave the new Constitution known as 'The Constitution of Nepal' in 1962. It was based on 'Partyless Panchayat system' under his leadership. In this period many other new nations had also turned towards autocratic leaders, particularly after a short period of experimentation with democratic system. The King had made his intentions clear about two years before the promulgation of the new Constitution. On January 5, 1961 in a proclamation the King had declared:

> "We have to open up a new spring of power which will remove the centuries-old poverty, ignorance, and backwardness of the country and which will nourish to maturity and fruitfulness the tree of democracy rooted in our soil and suited to our conditions. Since Panchayats are the basis of democracy, and a democratic system imposed from above has proved unsuitable... we have now to build democracy gradually layer by layer, from the bottom upward. It is our aim to associate the people in the administration at all levels and to

> develop village, district, and municiapl panchayats."[13]

Subsequently the King justified his procedure by juxtaposing the worthiness of his cause to the unworthiness of the former regime. But, in simple and familiar terms, "the absolutist monarchies of the day were defending their disdain for Parliaments on the ground that they received their authority from God by direct concession and were therefore responsible to Him."[14] King Mahendra spelled out his aim as that of "lifting the country within the shortest possible time from its present plight". He further said that

> "socio-economic development is its immediate objective, the ultimate objective being the creation of a dynamic, classless and exploitation - free society, based on equality of enjoyment in accordance with the law of proportion."[15]

The political ideology advocated by the King was claimed to have been derived from the very nature of the society and culture and traditions of the Nepalese people. The traditional parliamentary system had shown its worthlessness and incapacity in Nepal. A new type of democracy was to be established - the partyless democracy. But, "Partylessness in fact has two foundations - the active leadership of His Majesty the King and a restricted election system."

The Panchayat political system was based on the combinations of certain features agreeing with the spirit of the Government of

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13. Proclamations, Speeches and Messages : H.M. King Mahendra, Vol. II, (Department of Publicity, Ministry of Information and Broadcasting, HMG/Nepal, 1967), pp. 8-9.
14. Paul Woelfi S.J., Politics and Jurisprudence, Chap. Six: The Judicial Location of Authority (Chicago, 1960), p. 170.
15. Proclamations, op. cit., p. 169.

Nepal Act of 1948, the National Guidance System of Egypt and Indonesia, the Basic Democratic System of Pakistan, the Class Organisation System of Egypt and Yugoslavia, the theory of Panchayat Raj as propounded by Jaya Prakash Narayan in India and the Panchayat system as worked in several Indian States.[16] So the Panchayat Constitution in a sense is the admixture of different foreign systems.

The main objectives of the Panchayat system were spelled as follows: (i) to awaken the people for their own advancement; (ii) to accelerate the economic development of the country and, (iii) thereby create an awakened, democratic and developed society. These objectives could only be achieved, it was claimed, through a decentralized system of Panchayats.[17]

The King defending his action said:

> "To conduct the administration of the country and the people on the basis of popular consent and to achieve the real object of democracy by associating the people with the administrative system to the 'extent possible' could be possible through the medium of the Panchayat Democratic system under the dynamic leadership of the Crown."[18]

Democracy and development could only succeed if they started from the villages. This is not possible by simply passing Acts or rules or by what men at the upper level intend to do. The people should be associated with the government at every level. They should participate in mobilizing the resources of the country, thus helping in laying down the basis of democracy and the decentralization of public administration.

16. Leo. E. Rose, "Nepal's Experiment with Traditional Democracy", (Art.), Pacific Affairs, Vol. XXXVI (typescript), 1963, p. 2.
17. The Report of the Decentralization Commission, 2020, HMG/Nepal.
18. Proclamations, op. cit., p. 172.

Speaking of this, King Mehendra said :

> "The system alone can ensure the decentralization of political, economic and social forces in tune with the culture, beliefs and traditions of Nepal. This system only reflects the aspirations of progressive Nepal. Similarly, it is borne out by our own experience that real decentralization of power is possible only through a proper development of the Panchayat System ... When this principle of decentralization has been put into practice, we shall see that Village Panchayats and District Panchayats have been invested with the freedom and authority to pilot and execute many development and administrative projects and principles."[19]

The concepts of decentralization and Class Organisations aim at achieving maximum mass-participation in administration and at mobilizing the nation's human resources. In so far as the spirit of the Constitution of Nepal is concerned, it cannot be denied that it has introduced a new sense of socio-economic necessity. However, the experience of the last ten years since 1962 has made people ask whether Nepal has really achieved what was claimed and whether theory and practice are in accord, at all, with each other.

The government has not been able to give its attention to remote parts of the country. Singha Durbar, the Secretariat, has remained the hot-bed of inefficiency and corruption. The habit of men in authority of shifting responsibility to others disappointed the people. District authorities, too, failed in their duty as laid down in the Directive Principles and stated in speeches from the Throne.[20] Instead of forging the link between the Panchayat, the people, and the government, they merely served as agents of a soulless bureaucracy. Viswabandhu

19. Ibid., p. 135.
20. King Mahendra had warned the bureaucrats many times in his speeches and messages not to interfere with the Panchayat affairs and elections to the various levels of Panchayats.

Thapa, former Vice-Chairman of the Council of Ministers, has said :

> "It is not the Panchayat System, but bureaucracy, which is the power today."[21]

R.S. Chauhan writes :

> "Despite the fact that the basis of Panchayat Democracy is the decentralization of administration, the government has made Panchayat institutions dependent on it. The most glaring index of this is to be found in the fact that in the entire Panchayat System the Government officials dominate the local (Panchayat) officials as well as elected non-officials. Many members of the Panchayats complained to the author that the government officials ill-treated them. The system of distribution of authority in the Panchayat System was such that even a non-gazetted district government employee, they pointed out, could afford to neglect, and even insult the elected leaders of the Panchayats."[22]

Responding to such criticism, King Mahendra set up a "Janchbujh Kendra", a centre for investigation, under the Chairmanship of the Crown Prince, now King of Nepal, Birendra Bir Bikram Shah Deva, to undo the wrong at the hands of those weielding the gears of the administrative machinery.

The social policy of the Panchayat system is said to be to establish a peaceful society free from exploitation.[23] The system is without political parties. Therefore, it created various Class organisations on the basis of men's occupational functions.

> "It accepts the reality that - form or structure - that the Panchayat basically is - however down-to-earth it may be in its constitution needs some sort of mechanism to maintain an effective two-way communication between the government and the citizens of the country. Keeping this fact in view, the Constitution has made provision for the formation of Professional and Class Organisations."[24]

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21. Janmabhumi, Weekly (Kathmandu), February 17, 1966.
22. R.S. Chauhan, The Political Development in Nepal 1950-70 (Conflict between Tradition and Modernity) New Delhi, 1971, p. 273.
23. Directive Principles of Panchayat System, The Constitution of Nepal, Art. 19.
24. The Panchayat Democracy, op. cit., pp. 41-42.

There are five such Organisations - The Peasant Organisation, The Labour Organisation, The Youth Organisation, The Women's Organisation and The Ex-servicemen's Organisation. Commenting on the role of the Class Organisation, Nepal Times expressed the view:

> "These Class Organisations were formed as a medium for building sound public opinion and mobilizing the man power for helping in the task of national reconstruction so as to fill up the vaccum created by the ban imposed on political parties. In fact, they have not been able to play any political role. While His Majesty's Government has not passed any legislation to enable Class Organisations to represent the demands and aspirations of the people in an independent manner ... The leaders and workers of Class Organisations, only try on their part, to reach the National Panchayat or other offices of profit. All these factors have combined to defeat the political philosophy represented by Class Organisations. Naturally, the people feel that Class Organisations have now only become an agency of His Majesty's Government which is out of touch with the main stream of public life."25

Class Organisations are supposed to aim at achieving maximum participation in administration and at also mobilizing the nation's human resource for national development purposes. Visvabandhu Thapa advocates that,

> "There should be full power for Class Organisations and their full participation in political activities in this Panchayat System."26

However, the experiences obtained from the working of the Constitution and the government during the last decade have made people question whether really achievements have been made as claimed by the elite (i.e., ministers, bureaucracy, panchas, representatives of Class Organisations).

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25. Nepal Times, Daily, (Kathmandu), May 13, 1970; Nepal Press Digest, Kathmandu, Vol. 14, No. 20, p. 235.
26. Janmabhumi, Kathmandu, February 17, 1966.

Problems Before Panchayat System :

Though the people had suffered due to various party factions, the verdict of the general election (1959) for the establishment of a democratic government under the aegis of constitutional monarchy was clear and unequivocal. Yet the eighteen months long parliamentary system of government was dubbed 'a failure' by the Royal Proclamation of December 15, 1960 and the western type of democracy was declared to be 'unsuitable' to the soil of Nepal. The supporters of parliamentary democracy were condemned as 'anti-nationalists' and the supporters of the Panchayat system came to be regarded as the genuine nationalists.

The Partyless Panchayat System began to function under the leadership of the King. The terms 'Panchayat' and 'democracy' and 'socialism', have been used for all forms of governments. This reminds one of the words of C.E.M. Joad while defining socialism that it has lost its shape, on account of its various definitions, as the hat battered by handling by everybody. The system of election is indirect but with adult franchise at the village level. To be a member of the Rashtriya Panchayat, a candidate should get a sponsorer and a seconder from among the eleven members of his District Panchayat. Limited voters choose representatives of the people to the Rashtriya Panchayat, the total membership of which does not exceed two hundred. The indirect election system, except for the Village Panchayat, has not given to the people opportunity of participation in the decision-making process at any level. "Countrywide elections were held to fill up the Panchayat pyramidal structure at the village and town level on the basis of adult franchise. Immediately thereafter

at each level of the Panchayat pyramid and upto the apex, that is, the Rashitriya Panchayat, indirect election, elections were held with limited voters."[27]

The main problem facing the Panchayat System today is that it is a democratic system without opposition, and it does not allow free political discussion and debate whether through the press or in the platform. "Political activity in Nepal has naturally been restricted to drawing rooms because it was not allowed to be conducted openly, and, in addition, because the proceedings of the National Panchayat were kept secret."[28] The system does not allow for constitutional challenge from opposition groups. However, a group of obscurantists began to dance to the tune of the 'haves', because 'some of them are by-products of its implementation and some have their roots in the legacy of the past.[29] The main principle and object of the Panchayat System is claimed to be to create a healthy atmosphere for participation of the people and to create a free society without exploitation. But the Panchas did not work selflessly nor did they take interest in the Panchayat workers of their original constituency. They never gave opportunity for the active participation of people or encouraged the people. They ignored the interests of the common man and resorted to all sorts of corrupt practices to influence their limited voters. They lacked in discipline and leadership.[30] The Panchas no longer enjoyed the faith of the people. A reason for this might be found in the narrow hierarchy of the Panchayat leaders." The present Panchayat politics was characterized by

27. S.P. Gyawali, "In Retrospect" (Art.), The Motherland, Kathmandu, Vol. 16, No. 231, p. 3.
28. Dr. Tulsi Giri's address in a session of the Kabrepalanchock District Assembly on February 15, 1966.- Nepal Press Digest, Vol. X, p. 47; Janmabhumi, February 17, 1966.
29. Gyawali. op. cit., p. 4.

acute individualism and factionalism. Panchayat members, in fact, constituted a new class, the emergence of which topped the list of current social problems."[31] The people's representatives, instead of devoting most of their time to their districts, keep busy round the year at the centre. The Class Organisations, too, toe their line. The leaders suffer from indecision. The amendment to the clauses relating to the Class-Organisation rules was a reflection of the realization of this fact. The electoral base was widened. However, for the lack of its effective implementation, the vested interests have created loop-holes in the provisions,[32] and it has only increased corruption and factionalism.

Meanwhile, the attitude of the administration became more and more hardened. Bureaucracy created confusion. It sided with the reactionary forces. "It is a sad commentary on the Partyless Panchayat System that, even after a decade of its working, it could not produce even ten Panchas of national credibility."[33] The King is the supreme leader of this system. The people have felt that the King has not been able to create a sense of participation in them. He has been considered responsible for the total ineffectiveness of the system of 'decentralisation', and to the unchecked growth of the influence of vested interests in the bureaucracy which is now ridden with intrigues, corruption and nepotism. The aims of 'Back-to Village' national campaign were naturally frustrated at the hands of the vested interests.

31. Nepal Times, April 9, 1969; Nepal Press Digest, Vol. XIII, p. 154.
32. For divergent opinions on the question of broadering the elector base of the Panchayat System. See: Nepal Press Digest, Vol. 14, pp. 274-77.
33. Gyawali, op. cit., p. 4.

This campaign was meant for mobilizing the people through ceaseless activity at all levels. It was claimed as a corrective measure for the misuse of the Panchayat System by the so-called representatives of the people. It sought to bridge the gap between the people and the government by initiating a new phase for the upliftment of the villages. However, this programme remained merely an empty slogan.

Defects of Panchayat System :

In fact, "the Panchayat system's flaws and it failure on the performance - front constitute the sources of the system's 'anti-thesis'. This is the cause of the King's dilemma under a modernizing monarchy," as described by Samuel P. Huntington. This 'anti-thesis' of the Panchayat system, "which is gradually getting crystalised, is composed of (i) the hardcore modern elites, (ii) the peripheral elites, and (iii) that section of traditional interests and the new Panchayat elites, which, in the due course of time, has become disenchanted with the system. All of them are bound to mobilize the general discontent among the masses arising from the system's failure."[34]

The main factors for deficiency in the Panchayat System are: (i) The new system lacked a political ideology which could attract the emerging youth as well as the enlightened former party-workers; it was more personalistic and less institutionalized. (ii) The beginning of the system itself became very controversial. A large section of the conscious political elements were either prohibited or suppressed from participating in

34. Muni, op. cit., p. 25.

politics. As a result a new class was created which monopolized the different channels of Panchayat politics thereby blocking the ladders to the echelon of power. It helped to create a gulf between the King and politically conscious people. These politically conscious people who held critical views were branded as 'anti-national' elements. (iii) The political mechanism was based on a short-term strategy and not on long term planning. (iv) There was total failure for maintaining the balance between slogans and performances. The less the degree of achievement the greater was the amount of political frustration. It led conscious people to 'disenchantment' with the system. (v) The Panchayat system could not meet the challenge of the new situation due to lack of confidence of the general mass because the system is fully controlled by the tradition-bound society. (vi) Even those who can be called the backbone of the Panchayat System are not satisfied with the process of the existing system.

Assessment :

It is also argued that the Panchayat System is the natural product of the historical necessity of Nepal's development. The system is in existence for twelve years now and has withstood the challenges of an eventful decade. What is needed today is to bring appropriate modifications in it? A sense of participation in the system has to be created in the people. The people must be convinced that this system has really come to establish a classless and coordinated society, free from exploitation, offering to all maximum opportunity to develop their inherent qualities.

A landlocked country, Nepal, has Communist China and the Indian Republic as her immediate neighbours. The country has a sense of unity and identity among its various groups. Nepal is still in a semi-feudal state and "the preservation of Nepal's independence and its Hindu polity has been the primary responsibility of the ruling family historically." Some serious efforts for scientific planning and orderly economic progress had begun only after 1950. However, the government had failed to mobilize human and material resources for achieving economic development. Poverty, ignorance, disease and lack of opportunities for better standard of life still prevail.

Nepal has also to learn from the political changes going on in the neighbouring countries. One relevant question is: How far the situation of the Asian sub-Continent will favour the existing state of Nepalese Government and society? After 1970 there have taken place many political changes in the Asian sub-Continent - changes in Pakistan, in East-Bengal which is now Bangladesh, People's China and in Afganistan. One important thing needing attention is to mobilize the masses for economic development. This is possible only if the people are given the freedom to participate.

It is generally felt that the prevailing system has not been capable of delivering the goods and services basically needed by the people. It is not that no demands have been made for reforms in the present political structure. Demands have particularly been made for (1) open session of the National Panchayat; (2) reforms in the present electoral system for making it broad-

based; (3) election of the Prime Minister from among the members of the National Panchayat; (4) availability of unrestricted fundamental rights and unrestricted Rule of Law; (5) Freedom to organize a national forum outside the official control and to function within the limits of existing laws.

Regarding these demands, though high placed authorities have at times maintained that all fundamental rights were available and no autonomous national forum was relevant in the context of the prevailing political framework, the first demands have never been categorically castigated by the ruling establishment.

A question that can be raised, therefore, is : Why the ruling establishment is chary of conceding these first three demands? The reason may be that fulfillment of these demands would open a prospect for the political development apprehended by the poponents of the present system. If the fulfilment of these demands would necessarily bring reforms in the Constituion, it is to be seen whether the proponents of the system will be prepared for this eventuality.

APPENDICES

Published   Appendix 1

Some Important Lal-Mohars

Abstract translation of the Lal-Mohar* granted by King Surendra Bikram Shah of Nepal to Prime Minister and Commander-in-Chief Jang Bahadur entitling him and his brothers and descendants to call themselves Ranas, dated 1905 V.S., Baisakh Sudi 13, corresponding to 5 May 1849

You saved my life and the life of my father and younger brother, and maintained the dignity and respect of our Queens; you killed or expelled the traitors and kept intact the traditions and usages of the country; as a reward for all this, you got nothing except the powers of Mukhtiyar and the title of Commander-in-Chief for yourself, and the ranks of Generals and Colonels for your brothers, from my "younger mother" (Step-mother - Junior Queen of Rajendra Bikram Shah). My mother (Senior Queen of Rajendra Bikram) had taken to hermitage so that I acceded to the throne of Nepal. My father had promised in the Guhayeshwari temple to the effect that I accede to the throne at the age of sixteen. As a prelude to the fulfilment of this my mother left (for Banaras), but as soon as she reached the river Karra, she died of aval (a malarial fever). My desire could not be fulfilled. Afterwards, Mathabar Singh Thapa, in accordance with my instructions, killed sixteen persons at Dhukuvavas. But even he could not get me the throne, although, as a reward for the pleasure he caused me. I granted him land producing grain worth Rs one lakh and a quarter and gave him Rs two lakhs as Khillat. You saved our lives and ensured the security and authority of the throne and, therefore, no reward was sufficient for you. Even so, when offered a Khillat equivalent to that given to Mathabar Singh Thapa, you declined it by saying that whatever you possess is already given by us and that you are happy without it. Since you requested us not to give you this Khillat, I hereby grant you as follows:

Among your ancestors, our brother was ruling Chittaurgarh, while the other three brothers, not seeing good prospects there, proceeded towards the hills. One of them became the Raja of Taklakhar (a place in the north-west of Nepal, now in Tibet), another went to reside in Jumla, and the offsprings of the third in later times settled in Kaski. Your great great-grandfather, Ahiram Kunwar, came and lived in Gorkha in the time of our ancestor Nar Bhupal Shah, and (your ancestors) were called Kunwars till the present day. Now, (since) I am pleased with you, it seems to me that you and your ancestors have been Kunwar Ranaji. Today again, I confer on you the caste of Rana. Besides, with the exception of ourselves in the interest of our life, throne and country people taking another's life are liable to death sentence. But you Kunwar Ranas, for committing such acts, are exempted from death sentence. Instead, you are liable to be degraded of your caste, deprived of your property or exiled. You can enter into matrimonial alliances with Rajput families of your choice with the exception of those Rajput families in the Hills and the Tarai

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* Nepali Text from Chittaranjan Nepali, Kathmandu.

with whom we have marital relations. You will act according to the traditional customs and usages of the Rajputs. Being pleased with you, I hereby grant you the above title and privileges. One who does not abide by the above will suffer the consequences of having committed "five great sins" and of the evil eyes of god Pasupatinath and goddess Guhayeshwari. One who abide by the above will enjoy the blessings of these gods.

II

Abstract translation of the Lal - Mohar* granted by King Surendra Bikram Shah of Nepal to Jang Bahadur conferring on him the sovereignty of Kaski and Lamjung and the title of Maharaja, dated 1913 V.S., Sravan Sudi 6, corresponding to 6 August 1856.

I am pleased with you for the following reasons :

1. You secured to me the throne of Nepal by killing those persons who were helping the Junior Queen of Rajendra Bikram Shah (who had earlier given her the sovereign powers) in her designs of putting her own son on the throne, in deprivation of my rights;

2. You promoted friendship with the Queen of England by your visit to that country;

3. You won the war with Tibet, and made her pay to Nepal a huge sum of money every years;

4. You treated with respect and kindness my father, ex-King Rajendra Bikram Shah, in spite of his conspiracies against your life;

5. You exempted from death sentence and, instead, kept with respect in detention for five years my younger brother, Prince Upendra Bikram, who was an accomplice in a conspiracy against your life;

6. During your Prime Ministership, you have satisfied the nobility, the soldiery and the peasantry of Nepal, given them justice, and promoted peace and prosperity;

7. You have increased the military force of Nepal, observed economy, and added to the state exchequer.

You have performed these acts of welfare. I had promised to abandon the throne if you resigned the Ministership. But I failed to fulfil my promise even though you resigned the Ministership. Without consulting the Queen and the nobles, I conferred the Prime Ministership after your resignation on your younger brother at your request. Kiiping you without a post while I continue to sit on the throne is against the promise that I had undertaken. To keep so able a Minister without a post would be, in the eyes of the world, foolish on my part. For this reason :

You are hereby conferred the title of Maharaja of Kaski and

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*Nepali text from Gurujyu Hemraj's Vamsavali, Rastriya Avelakeha, Kathmandu.

Lamjung. Being the Maharaja of these places, you are authorised to prevent me from trying to coerce the nobility, the peasantry or the soldiery, or from disturbing the friendly relations with the Queen of England and the Emperor of China. At the time of your preventing me from doing so, if I offer any forcible resistance, the nobility and the army will assist you. You will advise the Prime Minister, Bam Bahadur, if he defults in matters of military, civil and administrative appointments and dismissals, and promotion of friendship with the emperors of England and China. If he refuses to abide by your advice and resorts to any force, my chiefs, nobles and the army are hereby asked to act on your orders. You will keep the people of your estates happy. While performing justice, you are granted the power to give death sentence. You are also granted the power, for the period of your life-time, to kill anyone in my kingdom who tries to disturb the peace of your estates. All this will be enjoyed by you up to offspring upon offspring. In the roll of succession to the Mukhtiyari (Prime Minister) fixed by me for your brothers, the Mukhtiyari After Dhir Shamsher Kunwar Ranaji is bestowed on your son Jagat Jang Kunwar Ranaji.

III

Abstract translation of the Lal-Mohar* granted by King Surendra Bikram Shah of Nepal to Maharaja Jang Bahadur Ranaji, appointing him as Prime Minister for the second term, dated 1914 V.S., Asar Sudi 7, corresponding to 28 June 1857.

I have appointed Sri Sri Sri Jung Bahadoor Ranajee to be the head (the Malik) of my Kingdom, and have invested him with the titles of Prime Minister and Commander-in-chief; I have given him power to declare war, to make peace and to control the domestic arrangements of the State with full Military, Judicial and Civil authority in all cases; he is empowered to appoint or dismiss from public situations, to control the Punjenee (Pajani) or periodical tenure of appointment and enlistments, and have also delegated to him the powers of life and death.

It will be his particular duty to keep up the friendship now existing between Nepal and the British and China Government, as well as to preserve peace with Bhote (Thibet).

All persons under my authority whether they be Civil or Military officers, Councillors, Nobles, soldiers or subjects, are placed under him, and will carry on their duties in subordination to him; those who act in obedience to his orders will receive honours and titles from him, but he has been empowered to fine or to imprison, or even to put to death those who may disobey him; in fact he may do to them whatever he may think proper; I have desired him at once to put to death all who will not obey him.

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* Foreign Secret Consultation (25 September 1857) 473.
See: Satish Kumar, Rana Polity in Nepal : Origin and Growth (New Delhi, 1967), pp. 158-60.

These powers are conferred upon him for his life time.

The above Lal Mohar was attested by

General Krishan Bahadoor
General Runodeep Singh
General Dhere Shamsher
General Bhugt Beer

and by the Raj Gooroos Bijay Raj and his son and by twelve others of the principal Military Sirdars.

(True abstract translation)

Sd/- C.H. Byers
Assistant Resident.

Unpublished

Appendix 2
(Abstract Translation)

Panja - Patra (Panja - Mohar)

Panja-Patra (Panja-Mohar) was an order or communication issued under the crimsion coloured palm-print of the King of Nepal. After 1856 A.D. (1913 V.S.) the Panja-Patra (Panja-Mohar) was only used for the appointment order of the Rana Prime Minister (Sri Tin Maharaja).

Abstract translation of a Panja-Patra (Panja-Mohar)* granted by the Kings of Nepal after Jang Bahadur to other Rana Prime Ministers till 2004 V.S., Baisakh Sudi 18, corresponding to 1 May, 1948

Swastisri Girgiraj Chakra Chudamani Narayanetyedi Vivida Virudabaili Virajamanmanotta Ojaswi Rajnayane --- Sri Panch Maharajadhiraja Sri Sri Sri ... Bikram Janga Bahadur Shah Bahadur Shamsher Jangdevanam Samarvijayanam.

In the roll of succession to Mukhtiyari (Prime Minister) fixed by the Lal-Mohar granted by our grandfathers and great-grandfathers to Jang Bahadur on 1913 V.S., Sravan Sudi 5, corresponding to 6 August 1856, conferring on him the sovereignty of Kaski and Lamjung and the title of Maharaja, I have appointed Sri Sri Sri Maharaja ... to be the head (the Malik) of my Kingdom and have invested him with the titles of Prime Minister Sri Tin Maharaja and Supreme Commander (Marshal). Now, I have given him power, to declare war, to make peace, and to control the domestic arrangements of the State with full Military, Judicial and Civil authority in all cases. I have also delegated to him the powers to command, the power of life or death, to brand, to seize the whole property, to exile, to appoint or promote or dismiss, to fine or to imprison or even to put to death who may disobey him.

It will be his particular duty to keep up the friendship now existing between Nepal and the British, China and Bhote.

In carrying out the administrative authority of the Prime Minister granted by Us Sri Tin Maharaja and Marshal shall do his duty in keeping with the orders issued by Us from time to time and the prevailing laws and acts, and shall remain loyal and devoted to the country.

* Ram Mani A.D., Purana Samjhana (Kathmandu, 2029), p. 228.

Unpublished

Appendix 3

(Abstract Translation)

Lal - Mohar granted by the King of Nepal to the Prime Minister of Nepal after 1951 under the Government of Nepal Act 2007 V.S.*

"You will remain in your office in accordance to Our will, you shall remain loyal to Us and Our successors and to the Interim Government Act 2007, Article 21 (a), Article 25 (2-3) and 26. In carrying out the administrative authority of the Prime Minister granted by us ... . You shall do your duty in keeping with the orders issued by Us from time to time and the prevailing laws and acts, and shall remain loyal and devoted to the country."

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* This is a copy of the Lal-Mohar granted to the Prime Minister Matrika Prasad Koirala by the King Tribhuvan Bir Bikram Shah Deva of Nepal, Lal-Mohar, Asad 4, 1010 V.S. - Kanun Patrika, p. 119.

Unpublished

Appendix 4
(Abstract Translation)

In January 1947 A.D. (Magh 2003 V.S.) the then Prime Minister, Sree Tin Maharaja, Padma Shamsher JBR circulated an important questionnaire to some of the high ranking officials, pertaining to reforms in Nepal.

Questionnaire

It is known to all that democracy or responsible government has become popular in most of the countries of the world and even those countries this form of government is not established have realised that they should establish democratic form of government. In India, anticipating the political changes that are sure to come, constitutional reforms are being introduced in the Indian States. We[1] are not sure how long shall we be able to withstand this force. Therefore, if we do not introduce political reforms in time and are forced to do so under internal or external pressure, results will not be favourable to us.

1. Whether we should introduce some changes or reforms or not?

2. If so, what type of reforms are suited to our country and out conditions?

3. In our opinion we should, for the present, establish a body consisting of nominated and elected members. In the beginning the body should have the following as members:

(a) The elected representatives of Jet-Raiti[2] and Zamindars from Terai region	...	4
(b) The elected representatives of Jet-Raiti and Zamindars from the Hill region	...	4
(c) The elected representatives of the Bhai-Bharadars from the Capital	...	2
(d) The elected representatives of the Intellectuals of the Capital	...	2
(e) The elected representatives of the businessmen of the Capital	...	2
(f) Nominated members	...	14
Total		= 28 members

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1. Royal Plural
2. Tenants.

What do you think of this proposal ?

4. Let us announce, "You will be assigned the task of discussing the law of the land only in the beginning. This initial duty has been assigned to train you, and later on as you get used to the work. You will be given more responsible duties". For the present, however, the body will have no right to discuss Rajkaj and Jangi Ain.[3]

5. The management of local affairs shall be handed over to the elected municipal bodies at the centre and in the districts.

6. How much of Civic Rights - Freedom of Speech, Press, and Association - should be granted?

7. We might have also to announce that taking into account the results of the present reforms, we will revise them every second year and give more power.

You are hereby ordered that as it is an important issue, you are to give a reply to the Preface and also to each clause after careful consideration, within a fortnight.*

Magh 2003 (January 1947).

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3. Rajkaj laws concerning the Royal Family and the Rana family. Jangi Ain means the law relating to the military affairs of the country.

* See: 'Nepali', (A Nepali Quarterly), No. 46, Magh, Falgun and Chaitra, 2027. Published by Madan Puraskar Guthi, Sri Durbar Tole, Lalitpur, Nepal.

Unpublished

Appendix 6

Reform Committee
(Abstract Translation)

I

The Reform Committee as announced by the Prime Minister, Sree Tin Maharaja, Padma Shamsher :

*1. Dakschin Tarphaka Commanding General Bahadur Shamsher JBR	...	Chairman
1. Commanding General Singha Shamsher JBR	...	Chairman
2. General Krishna Shamsher JBR	...	Vice-Chairman
3. Major General Mrigendra Shamsher	...	Member
*4. Major General Brahama Shamsher JBR	...	"
5. Major General Sharada Shamsher JBR	...	"
6. Major General Vijaya Shamsher JBR	...	"
*7. Major General Suvarna Shansher JBR	...	"
8. Badakaji Ratna Man Singh	...	"
9. Nayaba Bada Guruju, Hema Raj Panditju	...	"
10. Sardar Gunja Man Singh	...	"
11. Sardar Narendra Mani Acharya Dixit	...	"
12. Col. Suvarna Shamsher JBR	...	Member cum Secretar of the Commission

II

The Reform Committee formed five sub-Committees for drafting the Constitution. The sub-committees and their members were :

1. Supervisory Sub-Committee :

1. Commanding General Singha Shamsher JBR	...	Chairman
2. General Krishna Shamsher JBR	...	Vice-Chairman
3. Lt. General Narayan Shamsher JBR	...	Member
4. Nayaba Badaguruju, Hemaraj Panditju	...	"
5. Lt. Col. Soma Shamsher JBR	...	"

2. Election Sub-Committee:

1. Major General Mrigendra Shamsher JBR	...	Member
2. Lt. Col. Suvarna Shamsher JBR	...	"
3. Lt. Gen. Bahadur Shamsher JBR	...	"
4. Commanding Col. Gamvir Jung Thapa .	...	"
5. Prof. Ratna Bahadur Bista	...	"
6. Prof. Kula Nath Lohani	...	"
7. Thakur Gaya Prasad Shah	...	"

* Commanding General Bahadur Shamsher JBR resigned as the Chairman of this Committee for he felt agitated when non-Ranas were included in this Committee. General Singha Shamsher JBR became the Chairman of this committee subsequently.
* General Brahma Shamsher JBR and Suvarna Shamsher JBR did not attend the meetings of the Committee.

3. Law and Justice Sub-Committee :

1. Maj. General Sharada Shamsher	...	Member
2. Badakaji Ratna Man Singh	...	"
3. Sardar Rudra Raj Pandey	...	"
4. Mir Subba Ram Mani A.D.	...	"
5. Subba Deva Nath Verma	...	"
6. Mr. Bhagavati Prasad Singh	...	"

4. Fundamental Rights Sub-Committee :

1. Maj. Gen. Vijaya Shamsher	...	"
2. Lt. Col. Kahdga Narsingh Rana	...	"
3. Sardar Gunja Man Singh	...	"
4. Sardar Narendra Mani A.D.	...	"
5. Mr. Juddha Bahadur Shrestha	...	"

5. Translation Sub-Committee :

In the General Notice published by the Drafting Committee it was stated that members shall be appointed to this Committee later on.

See: Gorkhapatra, Vol. 47, No. 49, Sravan 20, 2004 V.S.

Unpublished

Appendix 6

I

Act relating to Freedom of Speech
(Abstract Translation)

1. The name of this law shall be called the law relating to Freedom of Speech.

2. This law shall come into effect throughout the Kingdom of Nepal from the Second Baisakh 2005 (mid April 1948).

3. Inspired by the pious ideal of national upliftment, a person may comment, discuss, speak or lecture on matters relating to the policy, function or activities of government administrative departments, offices or on matters relating to litigations in the courts or on matters relating to public welfare with a view to improving them and express healthy opinion to conduct affairs meant for practical application provided that such matters are not opposed to public policy, principles of morality and laws and by-laws of the country and are not defamatory to a person.

4. No person shall do the acts enumerated below either by speech, words, writing, suggestion, illustration or by discussion, argument, or comment :-

(a) Instigating murder;

(b) causing the officer or the Jawans or the army deviate from loyalty or duty;

(c) Breaking the laws and by-laws relating to the crime involving the person or office of the King, the Prime Minister, the Commander-in-Chief or foreign ambassadors or Consuler agent (Vakil) etc., or committing offence relating to stones marking the border and current role of succession or uprooting the existing administrative set up or causing any hatred or hostility to the King, the Primier, the administrative set-up, any tribe, family, society organization or individual or creating hostility to the King, the premier and the administrative set up.

(d) Causing a person to transfer his property or goods or to take possession of such property or goods under pressure of fear, pretension or terror or to dispossess a person of his prescriptive rights to a passage, a canal, a tank and a right to any immovable property or creating any form of right to such things enumerated above or instigating the Commission of acts punishable by law or preventing from the Commission of acts imposed upon by law.

(e) Prejudicing the current administration and abetting the making of impediment or obstruction to the operation of law in

force for the time being.

(f) Deferring payment or causing non-payment of the revenue, tax or other dues payable to the government or to any authorized institution or person.

(g) Delaying the performance of duty of a government official or preventing him from performing such duty under threat of harm or loss to such official or to the members of his family.

(h) Creating obstacle to the execution of acts to be done in accordance with laws and by laws.

(i) Causing hatred, malice, ill-will and hostility between one tribe and the other and between one citizen and the other in Nepal.

(j) Causing breach of peace, fear or terror and causing these to be done.

(k) Causing sexual excitement by speech, words or suggestion.

(l) Causing hostility with the friendly nations.

5. Where a person is convicted of an offence under sub-section (c) of section 4, he shall be liable to imprisonment from three months to life-long or a fine of Rs 5000 or both.

6. Where a person is convicted of offences under many sub-sections of this section, he shall be liable to imprisonment not exceeding two years or a fine of Rs 1000 or both.

(II)

Act relating to Assembly or Association

1. This law has been named "Law relating to Assembly or Association".

2. This law has been promulgated to take effect from the first of Baisakh 2005 (mid April 1948) throughout the Kingdom of Nepal.

3. Unless the context or the subject requires otherwise the following words shall be interpreted or shall be caused to be so interpreted in accordance with the procedure herein after mentioned.

(a) Assembly : Assembly of five or more persons at any place for a specific purpose with a view to conducting any discussion, consultation or lecture shall be deemed an assembly.

(b) Association : The coming together of five or more persons for a specific purpose, bound together under a regulation and working permanently in an assembly, group or association shall be deemed to be an association.

4. To hold a meeting peaceably and to set up an association for the purpose of managing the practical organisation of the work, to comment on the state administration and the policy or the regulation of offices for effecting changes there in, shall be permitted if such comments are inspired by the pious idea of national progress provided that they are not opposed to public policy, the principles of morality, laws and by-laws and are free from libel to any person.

5. To hold meeting or form an organisation motivated by any of the subjects mentioned below shall not be permitted.

(a) Institugating murder.

(b) Causing the officer or the Jawans of the army deviate from loyalty or duty.

(c) Breaking the laws and by-laws relating to the crime involving the person or office of the King, the Prime Minister, the Commander-in-Chief or foreign ambassadors or consulor agent (Vakil) or committing offence relating to stones laying at the border and current role of succession or uprooting the existing administrative set-up or causing, any hatred or hostility to the King, the Premier, the administrative set-up, any tribe, family, society organization or individual or creating hostility to the King, the Priemer and the administration.

(d) Causing a person to transfer his property or goods or to take possession of property or goods belonging to others under pressure of fear, pretension or terror or to dispossess a person of his prescriptive rights to a passage, a canal, a communcal tank and a right to any immovable property or creating any form of adverse right to such things enumerated above or causing these to be done or instigating the Commission of acts punishable by law or causing non-performance of acts imposed upon by law.

(e) Prejudicing the current administration and abetting the making of impediment or obstruction to the law in force for the time being.

(f) Deferring payment or causing non-payment of the revenue, tax or other dues payable to the government or to any authorized institution or person.

(g) Delaying the performance of duty of a government official or preventing him from performing such an official or to the members of his family.

(h) Causing obstruction in execution an act to be done in accordance with law.

(i) Causing hatred, malice, ill-will and hostility between one tribe and the other and one citizen and the other.

(j) Causing breach of peace or fear, terror and causing these to be alone.

(k) Insulting or censuring any religion or cult either by speech, word, symbol or picture or causing these to be done.

(l) Causing sexual excitement by speech, words or suggestion.

(m) Causing hostility either the friendly nations.

(n) Abetting the Commission of any act contrary to law.

6. The assembly or the organisation set up with the purpose enumerated above in section 5 shall be illegal.

7. Any person participating in an assembly or organisation the purpose of which is known to be illegal to such a person shall be deemed to be the member of such assembly or organisation.

8. If a person is convicted of an offence of being a member of such an illegal organisation, he shall be liable to imprisonment not exceeding 6 months or a fine of 5000 rupees or both.

9. When an organisation or an assembly is proved to be illegal, such organization or assembly shall be banned.

10. Even after the ban has been imposed upon an organisation or an assembly in accordance with the procedure laid down in Section 9 above, a person associating himself with such organisation or assembly or maintaining such organization or assembly shall be liable to imprisonment not exceeding 2 years and to a fine of 1000 rupees or both.

11. A person convicted under Section 5 above shall be imprisoned from six months to life-long term or be fined from Rs 100 to Rs 1000.

12. When an information is received that meeting of an illegal organization or assembly is going to be held on his land or in his house, the owner shall immediately report the matter to the nearest police station or sub-station. All possible efforts shall be done to close such a meeting of an illegal organization or assembly after the information that such illegal organization is being held. A person not immediately reporting to the police station or sub-station nor trying to stop such organisation or assembly shall fined a sum not exceeding Rs 100.

13. Where there is apprehension of breach of peace, an ordinance that no meeting be held in that district, regions or place shall be issued. Following the promulgation of the ordinance, no meeting shall be held in the district, region or place.

14. When a meeting has to be held at the place prohibited by the ordinance to hold such a meeting under any circumstances, an application to that effect shall be submitted to the officer duly authorized three days prior to the holding of such a meeting, and the meeting shall be held only after the written concurrence of the officer concerned.

- Khadga Nisana issued by Ain Targuma Adda. Kathmandu, 2006/3/3/4 (Sealed); Published from Gorkhapatra Chapakhana, Kathmandu, Gorkhapatra, Vol. 48, No. 4.

Unpublished

Appendix 7
(Abstract Translation)

(I)

The following were the members of the Central Legislature (Parliament) of Nepal under the Constitution of 1948 A.D. (2004 V.S.)

(a) According to Article 22(c) the following were the nominated members of the Bharadari Sabha:

1. Minister and Commander-in-Chief	President of the House
2. Purva (East) Commanding General	Member
3. Dakchin(South) Commanding General	"
4. Gen. Narayan Shamsher JBR	"
5. Lt. Gen. Sura Shamsher JBR	"
6. Maj. Gen. Basanta Shamsher JBR	"
7. Maj. Gen. Brahma Shansher JBR	"
8. Maj. Gen. Nara Shamsher JBR	"
9. Maj. Gen. Sharada Shamsher JBR	"
10. Maj. Gen. Arun Shamsher JBR	"
11. Gururaj Biswa Raj Panditju	"
12. Lt. Gen. Ram Shamsher JBR	"
13. Maj. Gen. Megha Raj Shansher JBR	"
14. Lt. Col. Parthivi Shamsher JBR	"
15. Bri-Col. Julendra Bickram Rana	"
16. Sahebajue Sambhu Bickram Shah	"
17. Raja Gyahendra Bahadur Shah	"
18. Chautariya Bahadur Shah	"
19. Guru Prohit Janak Raj	"
20. Guru Chatra Nath	"
21. Badakaji Ratna Man	"
22. Bri-Col. Indra Bahadur Karki	"
23. Lt. Col. Veda Bahadur Khatri	"
24. Sardar Soma Prasad	"
25. Pandit Lekha Nath	"
26. Sardar Narendra Mani AD	"

(II)

(b) The following were the nominated and elected members of the Rastra Sabha, Lower House of the Central Legislature according to Article 22 (b) of the Constitution of 1948 A.D. (2004 V.S.)

Nominated members of Rastra Sabha :

1. Paschim (West) Commanding General	Chairman
2. General Hari Shamsher JBR	Member
3. General Prachanda Shamsher JBR	"
4. Lt. Gen. Yeka Raj Shamsher JBR	"
5. Maj. Gen. Mrigendra Shansher JBR	"
6. Maj. Gen. Arjun Shamsher JBR	"
7. Maj. Gen. Laxaman Shansher JBR	"
8. Maj. Gen. Vijaya Shamsher JBR	"
9. Lt. Col. Suvarna Shamsher JBR	"

10. Lt. Col. Bharat Shamsher JBR	Member
11. Gururaj Nayaraj Panditju	"
12. Maj. Gen. Neer Shamsher JBR	"
13. Major Balakrishna Shamsher JBR	"
14. Lt. Col. Khadaga Narsing Rana	"
15. Bri. Col. Sovag Jaung Thapa	"
16. Lt. Col. Surendra Bahadur Shah	"
17. Lt. Col. Yagya Bahadur Basnet	"
18. Sardar Man Bahadur	"
19. Sardar Gunja Man Singh	"
20. Sardar Krishna Bahadur	"
21. Meer Subba Upendra Purush	"
22. Dr. Siddhi Mani A.D.	"
23. Prof. Kula Nath Lohani	"
24. Eng. Gyan Bahadur Pradhan	"
25. Subba Bhagavati Prasad Singh	"
26. Pt. Loka Nath Joshi	"
27. Meer Subba Bhim Bahadur	"

Elected Members :

1. Jagat Bahadur	- East No. 1
2. Megha Raj Upadhaya	- East No. 2
3. Tulasi Giri	- East No. 3
4. Pashipati Prasad Upadhya	- East No. 4
5. Gajendra Bahadur Pradhanga	- Dhankuta
6. Tanka Nath Basthola	- Illam
7. Siva Dutta Panjiyar	- Bara Parsa
8. Kebal Choudhary	- Rahuthat
9.	- Mahothari (No election result)
10. Rajendra Singh	- Sarlahi
11. Bhola Bickram Panth Chettri	- Saptari
12. Sivadayalu Sahu	- Sirahha
13. Harinarayan Sahu	- Morang-Jhapa
14. Bhim Bahadur	- West No. 1
15. Devi Bahadur Kavar Chettri	- West No. 2
16. Rishi Ram Seedahi	- West No. 3
17. Santa Man Shrestha	- West No. 4
18. Bhabendra Raj Paudyal	- Palpa
19. Rana Bahadur Gharti	- Gulmi
20.	- Salyan (No election result)
21. Giriraj Upadhya	- Piuthan
22.	- Dailekha (no election result)
23.	- Doti (No election result)
24.	- Dareldhura (No election result)
25.	- Baitrani (No election result)
26.	- Jumla (Election shall be held later on
27. Indra Bahadur Joshi	- Chisapani
28. Laxaman Narayan Shrestha	- Phali-Manakhanda
29. Gaya Prasad Shah	- Khajani-Syuraj
30.	- Kailai-Kanchanpur (No election result)
31. Krishna Prasad Tondon	- Bakee-Bardia
32. Krishna Prasad	- Kathmandu Velly

Four members represented from Nagar Panchayats:

1. Iswari Prasad Rimal	- Kathmandu Nagar Panchayat

2. Mahanta Govinda Harijangam - Bhaktapur Nagar Panchayat
3. Rudra Bahadur - Patan Nagar Panchayat
4. - Birgunj Nagar Panchayat

Interests (Constituencies)

Intelligentsia :

1. Shanker Dev Pant
2. Purna Prasad Brhaman

Merchants and traders :

1. Vesha Raj Sharma

Government servants :

1. Prof. Vaba Nath

Zamindars and holders of Birtas :

Labour :

See: Gorkhapatra, Vol. 51, No. 46, Sravan 16, 2007 V.S.

Unpublished

Appendix 8
(Abstract Translation)

According to the Article 13 of the Government of Nepal Constitutional Act 2004 V.S. (1951 A.D.), "there shall be set up from among the members of the Legislature, Administrative Committees to aid and advise the various departments of the executive and thereby associate the opinion of the legislature with the policy of the Government." Then according to Article 14(b) of this Act, the various Committees were appointed by His Highness the Maharaja Mohan Shamsher JBR on Aswin 19, 2007 V.S. (October 3, 1950 A.D.). According to this Act, there were to be at least four members in each Administrative Committee, and the Chairman was to be the head of the department for which the Committee had been constituted. In these Committees there were elected and nominated members. The following is a list of the Committees appointed and their members:

1. Head Administrative Committee

(a) Shri Lt. Gen. Sura Shamsher JBR - Chairman
(b) Rajguru Biswa Raj Pandit ju
(c) Dr. Siddhi Mani A.D.
(d) Govinda Hari Jangam
(e) Kailas Kishore

2. Education Administrative Committee

(a) Shri Maj. Gen. Mrigendra Shamsher JBR - Chairman
(b) Rajguru Nayan Raj Pandit ju
(c) Sardar Narendra Mani
(d) Prof. Kula Nath Lohani
(e) Shanker Deva Pant
(f) Purna Prasad

3. Forest Administrative Committee

(a) Shri Maj. Gen. Arjun Shansher JBR - Chairman
(b) Shri Maj. Gen. Megha Raj Shamsher JBR
(c) Lt. Col. Kahdga Narsing Rana
(d) Bodha Bickram Pant
(e) Rajendra Singh

4. Industrial Council Administrative Committee

(a) Shri Maj. Gen. Vijaya Shansher JBR - Chairman
(b) Lt. Col. Parthiva Shamsher JBR.
(c) Vesha Raj Sharma
(d) Krishna Gopal Tondon
(e) Siva Dayal

5. Cottage Industries Administrative Committee

(a) Shri Maj. Gen. Arun Shamsher JBR - Chairman
(b) Shri Maj. Gen. Ram Shamsher JBR

(c) Subba Bhagavati Prasad Singh
(d) Sri Rana Bahadur Gharichettari
(e) Sri Rishi Ram Sedaee

7. Agricultural Administrative Committee

(a) Lt. Col. Bharat Shamsher JBR - Chairman
(b) Chautariya Bahadur Shah
(c) Laxmi Narayan
(d) Hari Narayan
(e) Tanka Nath Bastola
(f) Santa Ram Shrestha
(g) Keval Choudhari

8. Transport Administrative Committee

(a) Shri Lt. Gen. Eka Raj Shamsher JBR - Chairman
(b) Lt. Col. Maheswar Shamsher JBR (in the absence he will be the Chairman of the Committee)
(c) Lt. Col. Yagya Bahadur Basnet
(d) Lt. Col. Veda Bahadur Kahtrichettari
(e) Sardar Gunja Man Singh
(f) Gajendra Bahadur
(g) Rudra Bahadhur

9. Justice Administrative Committee

(a) Shri Maj. Ballava Shamsher JBR - Chairman
(b) Badakaji Ratna Man Singh
(c) Sardar Man Bahadur
(d) Meer Subba Vairab Raj
(e) Pashupati Uphadhya
(f) Megha Raj Uphadhya
(g) Jagat Bahadhur Gotamee

10. Postal Administrative Committee

(a) Brg. Col. Sovaga Jung Thapa - Chairman
(b) Guru Chetra Nath Panditju
(c) Loka Nath Joshi
(d) Devi Bahadhur Kawar
(e) Tulasi Raman Giri

11. Public Works Administrative Committee

(a) Shri Prof. Bhavanath - Chairman
(b) Brg. Gen. Indra Bahadhur Karki
(c) Eng. Gyan Bahadhur Pradhan
(d) Indra Bahadhur Joshi
(e) Giriraj Uphadhya

12. Food Administrative Committee

(a) Shri Gaya Prasad Shah - Chairman

(b) Sardar Soma Prasad
(c) Meer Subba Bhim Bhadhur
(d) Pt. Iswari Prasad Rimal
(e) Siva Dutta Pangiyar

- Gorkhapatra, Kathmandu, Vol. 51, No. 75, Aswin 20, 2007 V.S.

Unpublished

Appendix 9

(I)

King Tribhuban's Royal Proclamation on the nomination of 35 persons Advisory Assembly on 17th of Aswin, 2008 V.S. (2 October 1951 A.D.)

The following person are the members of the First Advisory Assembly:-

1. Prof. Ratna Bahadur Bista
2. Shiva Raj Pant
3. Rajeshwori Prasad
4. Radha Krishna Tharu
5. Mahavir Shamsher
6. Dr. Triveni Prasad
7. Bharat Mani Sharma
8. Bharathom Malla
9. Mahendre Bickram Shah
10. Shivapati Pratap Shah
11. Parashu Narayan Chaudhari
12. Dhana Prasad Gurung
13. Bakhan Singh Gurung
14. Gopal Prasad Uphadhya
15. Lalit Man Tamang
16. Khadga Man Singh
17. Kedar Man
18. Saju Prasad
19. Dr. Brija Nandan
20. Gulab Narayan Jha
21. Raj Dass
22. Badri Bickram
23. Chhiring Tenzing Lama
24. Narad Muni Thulung
25. Til Bickram Shrestha
26. Shamsher Bahadur Subba Limbu
27. Ram Narayan Misra
28. Mahendra Narayan Nidhi
29. Rameswar Prasad Singh
30. Surya Nath Dass Yadav
31. Matrika Prasad Koirala
32. Narendra Nath Bastola
33. Krishna Prasad Uphadhya
34. Birendra Bickram Shah
35. Dambar Dhoj Rana Magar

- Dhudiraj Sharma, Parliament ka Salhakar Sabha, p. 302.
G.B. Devkota- Nepalko Rajnaitik Darpan, pp. 104-105.

(II)

Royal Proclamation on the reconstitution of the First Advisory Assembly on 2009/1/1 V.S. (14 April, 1952 A.D.)

King Tribhuban had nominated through his Proclamation, the following ladies and gentlemen as non-official members of the Assembly:

1. Sri Bhanu Bhakta
2. Dilip Singh
3. Dharma Bahadur Thapa
4. Shri Khadga Bahadur Malla
5. Hora Prasad Joshi
6. Sri Ayodhya Prasad Tharu
7. Sri Hridaya Raja Sharma
8. Subba Pashupati Koirala
9. Bishweshwar Prasad Koirala
10. Mrs. Maya Kumari Shaha
11. Mrs. Punya Prabha Devi
12. Dr. Tahir
13. Laxmi Prasad Devakota
14. Sri Siva Prasad Raunian
15. Tanka Prasad
16. Tulsi Mehar
17. Nripa Jung Rana
18. Kulanand Jha
19. Rishikesh Shah
20. Daya Shanker Munsi
21. Mrs. Prabhavati Devi

- Dhudiraj Sharma, Parliament ra Salhakar Sabha, p. 304.
  G.B. Devokta, Nepalko Rajnaitik Darpan, pp. 159-160.

Unpublished

Appendix 10

Note on the Interim Constitution of Nepal
(By H.P. Pradhan, M.A., B.L., Retired
Chief Justice, Supreme Court of Nepal)

The Fourth amendment of the Interim Government of Nepal Act of 2010, which is wrongly described as Third amendment has brought about fundamental changes, which cuts at the root of Democracy, which was ushered by the Royal Proclamation of February 18, 1951 (7th Fagoon, 2007).

The Preamble of the Interim Government of Nepal Act, 1951, contains the following statement of facts :

"Whereas by His Proclamation dated February 18, 1951, His Majesty the King of Nepal expressed his desire and resolve that his people should thenceforth be governed according to the provisions of a Democratic Constitution framed by a Constituted Assembly elected by them;

And whereas by the same Proclamation His Majesty the King of Nepal had expressed his desire and resolve that until such Constitution was framed, there should be a Council of Ministers to aid and advise him in the exercise of his functions;

And whereas by the same proclamation His Majesty the King of Nepal had constituted and appointed a Council of Ministers to aid and advise him in the exercise of his functions;

And whereas it is necessary that during this interim period the Interim Government should function according to a Constitution and certain Rules and principles;"

The use of the words "constitution" and "Act" has caused some confusion in as much as the Interim Government of Nepal Act has not been given the status of the Constitution inspite of the Full Bench decision in Yakthumba's case that "the Royal Proclamation of the 7th Fagoon, 2007, the Interim Government of Nepal Act of 1951 and the Byaktigat Swatantrata ko Ain" (Individual Liberty Act) have to be regarded as the Interim Constitution of Nepal." This judgement has also described the Royal Proclamation of 7th Fagoon, 2007, as the Magna Carta of Nepal. This Royal Proclamation has actually laid the foundation of Democracy in Nepal. The word "thenceforth" in the first para of the Preamble is probably a mistranslation of the Nepali expression "   " in the Royal Proclamation. The correct translation should be "henceforth" which makes all the difference. The Full Bench decision of the Pradhan Nayalaya has taken into consideration the correct meaning of the word, and had ruled that a democratic constitution was envisaged even for the interim period. No other interpretation was possible as otherwise a democratic government would come only after the Constituent Assembly had framed a Constitution and the autocratic rule of the Ranas would have been replaced by that of the King, which could not

be the spirit of the Royal Proclamation. It is for this reason that a Council of Ministers with joint responsibility was also constituted by the Royal Proclamation instead of a Board of Advisers. The Interim Act (constitution) therefore provided that "the Executive power of the State shall be vested in the King and his Council of Ministers and shall be exercised by him in accordance with the advise of his Ministers, either directly or through officers subordinate to him in accordance with this Act" (Sec. 21(1)). But it has been replaced by the following: "The Executive power of the State vesting in the King shall be exercisable by him either directly or through Ministers or other officers subordinate to him." By this amendment the executive power of the State has vested in the King only thus placing Nepal in the same condition as England was during the Middle Ages. This amendment is therefore ultra vires of the Royal Proclamation.

By amendment of Section 29 the Legislative power has been solely vested in the King. Before amendment, Section 29 gave only ordinance making power to the King on the advice of the Council of Ministers. The position is completely changed. Except for the pressure of public opinion the King has now absolute Executive and Legislative powers, which is against the spirit of the Royal Proclamation and is therefore ultra vires.

The Constitutional position of the Judiciary has been completely undermined by amendment of Section 30 of the Interim Act (constitution). The Pradhan Nayalaya has therefore lost its constitutional position, and by the amendment of Section 4 of the Pradhan Nayalaya Act it has lost its independence. The amendment of the Pradhan Nayalaya Act has made all the powers of the Pradhan Nayalaya subjects to the Royal Prerogative powers, which has still remained undefined, and it may be used in all conceivable matters though His Majesty has not so far interfered with any of the decisions of the Pradhan Nayalaya.

The amendment of Section 2 of the Interim Act (Constitution) has, however cleared the doubt which many had regarding the enforcibility in court, of the Directive Principles. It has set at rest the controversy on the subject. But by still retaining Sections 16, 17, 18, 19 and 20 of the Interim Act (Constitution) under the chapter on Directive Principles the people has lost some privileges which they got before the amendments though Section 16 has been described as "Fundamental Principles of Law" the Court cannot apply them as this Section comes under the Chapter of Directive Principle.

There is no provision in the existing law by which the Government can be made a party-defendant and the only remedy the people could get from the Pradhan Nayalaya was by way of writ against any action of the Executive affecting their interest. By deleting Section 30 of the Pradhan Nayalaya Act, which gave powers to the Pradhan Nayalaya to issue writs, the people are left without any remedy from the Judiciary. In a democratic country Judiciary is the only form from which people can obtain remedy against the vagaries of the Executive. Since these people have been left with no remedy in Nepal the Executive is all powerful and is without any check. Democracy is a system of check and balance and since there is no

such check on the Executive the present administration is nothing but autocratic. Since the Salahkar Sabha (Advisory Assembly) is not empowered to pass vote of no-confidence on the Executive no Legislative check exists.

Even restoration of Section 30 of the Pradhan Nayalaya Act is not likely to improve matters unless the Interim Government of Nepal Act is amended by substituting the word 'Act' by 'Constitution', or the expression "rights conferred by the Constitution" is substituted by "rights conferred by the Laws" in Section 30 of the Pradhan Nayalaya Act.

It may be useful to quote here the reasons given by the Full Bench of the Pradhan Nayalaya regarding what the Interim Constitution is "Now the question arises, what is the Constitution? The Royal Proclamation of the 7th Fagoon, 2007, which can be called the Magna Carta of the Nepalese people, mentions His Majesty's desire and resolve that the people should thenceforth be governed according to the provisions of Democratic Constitution framed by a Constituent Assembly elected by them and that it is necessary that during this Interim period the Interim Government should function according to a Constitution and certain rules and principles, and accordingly the Interim Government of Nepal Act, 1951, was approved by His Majesty on the 10 April 1951, corresponding to the 29 Chaitra 2007 (H.M.'s Red Seal was affixed on the English version and so the expression therein has been used), and besides this on the 2nd Aswin, 2006, and Act conferring Fundamental Rights described as "Byaktigat Swatantrata ko Ain" was promulgated throughout the Territory of Nepal.

Now this Royal Proclamation, the Interim Government of Nepal Act, and Byaktigat Swatantrata Ko Ain are the result of agitation of the people and the Revolution, and promulgated for the welfare of the people and for the safe guard of their rights. According to the Royal Proclamation the Democratic Constitution framed by the Constituent Assembly can only be regarded as a real Constitution, and as such whether the aforesaid Acts should be regarded as an Interim Constitution or as an ordinary Law. In America, India and other countries they have a written Constitution, but in England only there is no such Constitution and as such the Magna Carta, Petition of Right, Bill of Rights and the Act of Settlement taken together constitution an enacted Constitutional Code (Ridge's Constituional Law, 8th Edition, page 370). In Nepal also so long as a Constitution is not framed by a Constituent Assembly the Royal Proclamation of the 7th Fagoon, 2007, the Interim Government of Nepal Act 1951, and Byaktigat Swatantrata ko Ain have to be regarded as the Constitution of the country."

It should be noted here that as the Royal Proclamation contemplated an Interim Constitution and not an Act the Full Bench had held that for the Interim period the above-named three documents should be considered as Interim Constitution as otherwise Section 30 of the Pradhan Nayalaya Act would be inoperative and the Government would have been charged by the people of having betrayed them.

Relevant extract from the Royal Proclamation is given below for ready reference -

हाम्रो प्रजा को शासन अब उप्रान्त निजहरूको निर्वाचन गरेको एक वैधानिक सभाले तर्जुमा गरेको गणतन्त्रात्मक विधान को अनुसार होओस भन्ने जुन हाम्रो इच्छा र निर्णय भएकोले, त्यो सो विधान तयार नभएसम्म अहिले हामीलाई हाम्रो कार्य सम्पादन गर्नमा मद्दत र सल्लाह दिनाको निमित्त दुनियांको विश्वास भएका दुनियांका प्रतिनिधिहरू समेत सम्मिलित भएको एक मन्त्रीमण्डल को संगठन होओस भन्ने हाम्रो इच्छा र निर्णय भएको

(It is and has constantly been Our wish and Our resolve that the people of Our beloved country should be governed in accordance with the provisions of a democratic Constitution to be framed by the elected representatives of the people themselves and had expressed his desire and resolve that until such Constitution was framed, there should be a Council of Ministers to aid and advise him in the exercise of his functions ...).

A constitutional question of great importance arose when the Pradhan Nayalaya ordered the Kathmandu Magistrate to produce Sri Mrigendra Shamsher and his sons to hear their Habeus Corpus petition under the Byaktigat Swatantrata Act on their arrest and detention after they were released by the Pradhan Nayalaya. On orders of the Home Minister the Majistrate refused to produce them. The only alternative left was to draw Contempt of Court proceeding against the Home Minister, but as there was no such precedent in the democratic countries and even if the Pradhan Nayalaya had taken such a step the order of the Pradhan Nayalaya would have been inoperative as the Home Minister controlled the Police and the Jail. The Pradhan Nayalaya therefore referred the matter to His Majesty drawing his attention to Section 36 of the Interim Government of Nepal Act which provided that "full faith and credit shall be given throughout the Territory of Nepal to public Acts, records and Judicial proceedings of the country." No reply has yet been received from His Majesty and the Constitutional issue has still remained unsolved.

Unpublished

Appendix 11

Proclamation of the King
(January 20, 1954) (Magh 7, 2010 V.S.)

Swastishri Giriraj Chakra, Chudamani Nar Narayanestyedi Vividhvirudayali Virajman Manonnat Ojaswi Rajanya, Projjwal Nepaltara Om Rampatta Atuliyotir, aya Trishkipetta, Ati Praval Gorkha Dakshinbahu, Mahadhipati Field-Marshal, Sarvocchcha Commander-in-Chief Shri Manamaharajadhiraj Shri Shri Shri Maharaj Tribhuvan Bir Bikram Jang Bahadur Shah Bahadur Shamsher Jang Devanam Sadasamarvijayiman.

To all my beloved people, greetings

WHEREAS it has been brought to Our notice that some doubts have raisen in respect some constitutional matters of Our Kingdom and the interpretation of some legal matters;

AND WHEREAS it is essential, in the interest of Our beloved country and Our beloved people that in this delicate transitional period such doubts should not be allowed to remain.

NOW, THEREFORE, I, King Tribhuvan Bir Bikram Shah Deva of Nepal, do hereby proclaim and ordain as under:

(1) It has been the established tradition and practice in our country since the time of My August forefathers that by virtue of the inherent sovereignty and the Royal prerogatives, the supreme executive, Judicial and legislative authority vests in the Sovereign. For some time this authority was, in accordance with the delegation made by some of Our distinguished predecessors, exercised by their Prime Ministers. This delegation was, by virtue of Our Proclamation of 7th Falgoon, 2007, revoked where by the supreme authority in all the spheres vests solely in Us.

(2) It is and has constantly been Our wish and Our resolve that the people of Our beloved country should be governed in accordance with the provisions of a democratic Constitution to be framed by the elected, representatives of the people themselves. Efforts towards the holding of the elections for the Constituent Assembly are being made as vigorously as is possible under the circumstances prevailing in Our Kingdom. The Constitution of Our Country will be the one which will be prepared by this Constituent Assembly.

(3) For the interim period till the Constitution of the country is framed by the duly elected Constituent Assembly it is as it has always been Our wish and Our resolve to associate, as far as possible, the voice of the people in the government of this land. In pursuance of these Our resolves, We have from time to time been administering to the needs of the people with the help of various Councils of Ministers or for some short period, a body of Counsellors in the special circumstances then prevailing - For the guidance of Our Councils of Ministers and various other bodies, We promulgated under Our authority a law known as the Interim Government of Nepal Act, 1951, and We have also amended this Act by two subsequent amendments. In the same manner We have also promulgated various

other laws and rules for the better administration of the people. All these laws and rules have been promulgated by Us in the exercise of Our inherent rights of sovereignty and Royal Prerogatives, and they shall continue to have full force in the whole country, subject to such amendments or modifications as We might be pleased from time to time to make. Similarly, by virtue of Our inherent rights of sovereingty and Royal Prerogatives, We shall continue to legislate, as We have done hitherto, and all such our Acts shall have the usual force of law in the whole country. We might, when suitable opportunity comes, delegate some limited powers in this legislative sphere, as may be specifically laid down to any body such as the advisory assembly. The whole position legislation and the procedure might be revised by some body which We might be pleased to constitute later on, in accordance with Our desires and resolves, and to which We might be pleased to transfer our legislative authority to such an extent as may be specified. Till then the supreme authority in the legislative sphere will, as it has till now, continue to vest in Us.

(4) In the Judicial sphere, We have, in accordance with Our desires and resolves already transferred some of Our inherent authority to the Pradhan Nyayalaya, by virtue of the various provisions in the Interim Government of Nepal Act and the subsequent Pradhan Nyayalaya Act. It should be clear that whatever judicial authority has not so far been delegated to the Pradhan Nyayalaya, by virtue of these Acts, as amended from time to time, shall continue to vest in Us till such time as a proper Constitution is framed by a duly elected Constituent Assembly. It should also be clear that no court or any other authority can exercise any power which is not specifically delegated to is or to him, in accordance with any law duly promulgated by Us under Our authority.

(5) In the executive sphere, We have, in accordance with our desires and resolves, been administering to the needs of Our beloved people with the help of a Council of Ministers. The executive authority has in the prescribed manner been delegated to this Council of Ministers, in accordance with the various provisions of the various acts and rules which We have been pleased to promulgate from time to time. Any power or any authority exercised by our ministers or by other subordinate Government servants, in accordance with the Acts, Rules, Regulations or Seals, Promulgated by Us or under Our authority, shall be and shall be deemed always to have been, proper and valid exercise of the executive authority and will as such not be subject to being questioned in any court. Proper procedure for the redress of grievances of the people and sustainable remedies shall be provided in various spheres of the exercise of the executive authority in the various laws and rules proceedings for the exercise of such executive authority.

(6) In order to remove any such doubts we are arranging to introduce certain amendments in some of the existing laws, but this Our Proclamation shall all the same be given full recognition by all My people, all courts of law.

Issued under Our hand and Our special seal this day Maghe 7 of year 2010.

- Nepal Gazette, Vol. 3, No. 26. Published by Gorkhapatra Press, Kathmandu.

Unpublished

Appendix 12

DRAFT CONSTITUTION OF THE KINGDOM OF NEPAL

EXPLANATORY MEMORANDUM

by
SIR IVOR JENNINGS, K.B.E., Q.C.

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In the Royal Proclamation of the 1st February, 1958, His Majesty the King of Nepal provided that --

"There shall be a Commission to prepare a draft for a new Constitution (answering the needs of the time, country and circumstances) on the basis of the present Interim Constitution, according to necessity, foreign experts will be coopted to aid and advise the Commission; on the basis of the Constitution thus prepared, general elections shall be held for Parliament; this Parliament shall consist of two Houses and all possible provisions shall be made to safeguard the country's sovereignty, independence and people's rights.

Elsewhere in the Royal Proclamation it was recalled that His Majesty had already proclaimed the 18th February, 1959, as the date for initiating general elections.

2. A Commission consisting of Messrs Bhagwati Prasad Singh, (Chairman) Ramraj Panta, '.P. Upadhaya, Randhir Subba and Hora Prasad Joshi (Secretary) was duly constituted. Arrangements were made through Her Majesty's Government in the United Kingdom for me to reach Nepal on the 20th March 1958 and to assist the Commission for a period of one month. The time available being so short, the Commission proceeded forthwith to prepare a Draft Constitution; and the result of their labours is attached hereto. The Commission requested me to prepare an Explanatory Memorandum.

General Principles

3. The Royal Proclamation contemplated the setting up of a Parliament consisting of two Houses; and the reference to the Interim Constitution suggested that elections should be based on adult suffrage exercised in general or territorial constituencies. The Interim Constitution also provided for a Council of Ministers, or Cabinet, to aid and advise His Majesty in the exercise of his functions. It was presumed that this Cabinet should be collectively responsible to Parliament, as well to His Majesty, in accordance with the practice followed in other monarchies operating the Parliamentary system of government. There was also in the Royal Proclamation a reference to the safeguarding of the people's rights; and this seemed to require a chapter dealing with the rights of citizens, or civil liberties.

4. On this basis, the Commission has prepared a draft similar in principles to the Constitutions of other countries in Asia operating the parliamentary system of government, but with the modifi-

cations which distinguish a constitutional monarchy from a republic and a unitary state from a federal state. The general scheme is as follows:-

(1) Executive authority is vested in His Majesty, but the general direction and control of administration are vested in a cabinet responsible to Parliament. Because the parliamentary system is new to Nepal, and accordingly guidance cannot be sought from constitutional conventions, care has been taken to define, with such precision as the changing circumstances of government allow, the relations between His Majesty and His Ministers.

(2) Parliament will consist of two Houses, called in the English text the House of Representatives and the Senate. The House of Representatives will consist wholly of members elected by the electors, voting in single member constituencies by secret ballot; and adult franchise is provided for. There will be a general election every five years, or more often if His Majesty dissolves Parliament on the recommendation of the Cabinet. The Senate on the other hand, will consist as to one-half of persons elected by the House of Representatives by proportional representation, and as to the other half of persons appointed by His Majesty on the recommendation of the Prime Minister. When Parliament is dissolved the Senators will retain their seats, but one-third of the Senators will retire every two years. Provision is made for the House of Representatives, as the elected House, to override the Senate, except in respect of constitutional amendments; and the Cabinet will be collectively responsible to the House of Representatives. All legislation will require the Royal Assent, but the circumstances in which His Majesty may withheld assent are specified.

(3) The functions of the judiciary will include that of declaring invalid any laws which are inconsistent with the Constitution, and the usual provisions have been inserted for protecting the independence of the Supreme Court.

(4) The financial system contemplated is now customary in countries operating parliamentary government, but has been simplified to suit the conditions of Nepal. The usual provisions for the audit of accounts by an independent Auditor-General have been inserted.

(5) The system of an independent Public Service Commission, already adopted, has been strengthened in view of the transfer of most of the functions of government to Ministers responsible to what may, well be a party majority.

A more detailed explanation follows:

Commencement of the Constitution

5. The Draft Constitution has been prepared on the assumption that it will come into full operation on an "appointed day" after general elections have been held, the Senate constituted, and a Prime Minister appointed. Part II relating to Citizenship, will however come into operation on the promulgation of the Constitution because it will be needed for the compilation of electoral rolls.

It should be noted that, before elections can be held to provide a House of Representatives as contemplated by this Draft Constitution, it will be necessary (a) to promulgate the Constitution, (b) to enact an electoral law, (c) to appoint Delimitation and Election Commissions, and (d) to prepare new electoral rolls. The Constitutional Commission is aware that much preparatory work has already been done, and it should be possible to hold elections beginning in February 1959, but only if expedition is shown in the completion of the formalities involved in promulgating this Constitution and enacting the electoral law, which is already in draft.

6. Certain other steps will, however, be needed to bring the Constitution into full operation. They conclude :-

(1) The making of Standing Order for both Houses of Parliament;
(2) The making of Regulations for Government Procedure;
(3) The making of a number of appointments;
(4) The determination of emoluments for the persons who will assume office when Parliament begins to function.

Powers sufficient for this purpose are given to His Majesty by Article 77; and in case difficulties arise in the transition to the new Constitution the usual temporary power to remove them has been conferred on His Majesty by Article 79. It is appreciated that not all the existing laws can be modified before the "appointed day" and accordingly the "Pakistan Formula" has been used in Article 78. It will enable the Courts to apply the laws with the necessary adaptations; but this is not an easy task for the Courts, and accordingly as many as possible of the laws should be adapted by Proclamation under that Article before the "appointed day". The Constitutional Commission has already arranged for the preparation of a draft of the Regulations referred to in (2) above.

The Constitution as fundamental law

7. The Constitution will be promulgated by His Majesty in accordance with the powers reserved by Him in the Interim Government of Nepal Act, 2007, amended. When promulgated, however, it becomes fundamental law in accordance with Article 1, and can be amended (subject to the temporary power to remove difficulties in Article 79) only in the manner and form provided in Article 56; that is, any amendment will require the assent of His Majesty, the Senate and the House of Representatives; and, since it is not desirable that a mere temporary majority should have power to amend a written Constitution, the majority in the House of Representatives must be two-thirds of the total number of members. All laws inconsistent with the Constitution, whether made before or after the "appointed day" will become invalid, subject to some minor qualifications (e.g., under Articles 7 and 14) in respect of which flexibility is required.

8. In this way the Draft Constitution carries out the instructions of the Royal Proclamation of the 1st February "to safeguard the Country's sovereignty, independence and people's rights." They cannot lawfully be taken away except by an Act of His Majesty in Parliament in accordance with Article 56; but, as mentioned below, adequate provision is made to enable His Majesty to meet any emergencies that may arise.

The Position of His Majesty

9. The succession to the Crown in accordance with the existing law is saved by clause (2) of Article 1, and clause (3) applies the Constitution to His Majesty's heirs and successors. Machinery for setting up a Regency, if it should prove necessary, is provided by Article 16, referred to below. Executive power is vested in His Majesty by Article 15, which also indicates in general terms (the details are to be found in other Articles) when that power should be exercised on recommendation and when in discretion - thus formulating the conventions operated in other Constitutional monarchies. His Majesty will be in supreme command of His Majesty's forces (Article 69), will confer Pardons, reprieves, etc., on the recommendations of the responsible Minister (Article 70), and will confer titles and honours (Article 71) article 72 gives the usual protection from suit, while allowing suits against His Majesty's Government.

Citizenship

10. Citizenship is usually covered by ordinary law. The existing citizenship law has, however, proved difficult to apply in the process of determining what persons were entitled to be enrolled as electors. There was already in draft a citizenship law, amending and consolidating the existing law. The main provisions of that draft have been redrafted as constitutional provisions and inserted in Articles 2, 3, 5 and 6. As is usual, Articles 2 and 3 combine the ius soli and ius sanguinis; that is, a person born in Nepal, or a person born outside Nepal whose father was born in Nepal, is generally a citizen of Nepal; but in subsequent generations Nepalese citizenship is obtained only if the birth is registered with a prescribed Nepalese authority. The principle of Article 4, which confers citizenship on women marrying Nepalese citizens, is less commonly accepted than it used to be; but it was felt that the close family relations of Nepal, and difficulties caused by an open frontier, made it desirable that husband and wife should have the same nationality. Article 5 is designed to cover those who had registered or be naturalised as citizens under the existing law and these who, not being citizen by birth, descent or marriage under Articles 2, 3 and 5, might have claimed citizenship under the existing law; it applies particularly to persons of Nepalese origin whose famililties had emergrated and who had returned to Nepal. Article 6 contains the usual proviso, and Article 8 is incidental. Article 7 makes plan that citizenship law will remain under parliamentary control, as in most other countries. It will in fact be necessary to enact a new citizenship law induce course, especially to provide for citizenship by naturalisation but there are sufficient provisions in Part II to being the Constitution into operation without further legislation on the subject.

Civil Liberties

11. In formulating the Articles of Part III, use has been made of the Nagrik Adhikar Ain, 2012, the Constitution of India and the Constitution of Pakistan. Part II of this Constitution of Pakistan was drafted with the experience of India in Mind; and it was thought

that the use of comparatively single general proposition, as in Pakistan, was more suited to the conditions of Nepal. It was thought, however, that the process could be carried further and that the qualifying phrases of the several Pakistan Articles might be collected is a single provision in Article 14, which has been given the marginal note "Law and order". This has enabled the Commission to produce five comparatively simple articles, most of which could easily be explained even to illiterate citizens, and covering personal liberty, equality, religion, property, and political liberties. That all liberty is subject to the requirements of law and order -- and indeed cannot be made effective unless these requirements are satisfied -- is made plain by Article 14. Unlike these of the Interim Constitution, these civil liberties are limitations on the power of Parliament, and accordingly Acts of Parliament inconsistent with Part III of the Constitution are rendered invalid by Act Clause (3) of Article 56. A special procedure for dealing with invalid law is provided by Article 57, but this is additional to the ordinary legal remedies, which include the directions, orders and writs (including habeas corpus, etc.) provided by Section 11 of the Supreme Court Ain 2013.

The Executive Government

12. Most of the provisions of Part IV contain the more or less standard formulae necessary to bring Cabinet Government into operation. The fact that Nepal is a Kingdom, however, and that no opportunity has yet arisen for the development of conventions, has made necessary a clearer definition of the position of the Crown in relation to the Cabinet and otherwise. It has been thought wise not to use the English term "advise" because, though familiar enough to those with experience of the British Constitutional system and its offspring both inside and outside the British Commonwealth, it was felt that, translated into Nepalese, and read by those who had not had that experience, it might convey the idea of a discretion. A distinction has therefore been drawn between acts done by His Majesty in his discretion" particularly those of appointing a Prime Minister and refusing a dissolution of Parliament, and those done "on the recommendation" of the Cabinet or a responsible Minister. Speaking generally, His Majesty would act on the recommendation of the Cabinet; but in certain cases in which it is customary for a constitutional monarch to act on the "advice" of a particular Minister, the "recommendation" of that Minister has been specified (e.g., the appointment of Cabinet Minister under the Article 18, the appointment of Senatros under 24 and the grant of pardons etc. under Article 70). The necessary definitions and consequential provisions are contained in Article 15. It would not be easy to go further in the direction of definition without losing flexibility. It is thought, however, that further guidance could be given to Ministers and other servants of the Crown, perhaps by illustration and example, by means of something like a "Manual of Procedure", adding to the Transaction of Business Rules used in most Cabinet systems. Provision has been made for that purpose in clause (2) of Article 21.

13. In accordance with Article 18, the Prime Minister must be a person who, in His Majesty's opinion, can or will be able to

command a majority on the House of representatives. Normally he would be a member of that House; and where a party or a combination of parties has a majority, and also a recognised leader, no difficulty should arise. Where there is difficulty in finding a leader, however, it has in other countries sometimes been found convenient to appoint as Prime Minister a person in the second Chamber, or even outside, and this has been made possible by Clause (3) of Article 18. In any event, the other Ministers will be appointed on the recommendation of the Prime Minister. There may also be Assistant Ministers under Article 19, and the same Article also authorises the appointment of temporary deputies from among other Ministers or Assistant Ministers. Only the Prime Minister and the other Ministers will form the Cabinet, which by Article 17 will be charged with the general direction and control of the government of Nepal and will be collectively responsible to the House of Representatives. One aspect of this responsibility is shown by the provisions of Article 18 relating to the vacation of office. Votes of no-confidence will be against the whole Government, and when the Prime Minister ceases to hold office other Ministers will, with the delay needed to carry on government, also cease to hold office, though they may of course be re-appointed on the recommendation of the new Prime Minister.

14. The laws of Nepal at present make no provision for a Regency or a Council of Regency in the event of the Throne becoming vacant or in the event of the sovereign becoming incapacitated. To meet this need, provision is made in Article 16 for setting up a Council of State. That council will have no other executive functions. In view of the wide responsibilities which will, however, inevitably vest in the Sovereign as constitutional monarch and it must be remembered that the Constitution will apply equally to His Majesty's successors, whether male or female, experienced or inexperienced -- and the various "crises" which occur with distressing frequency in all countries, it has been thought desirable also to make the Council of State a consultative body if and when such "Crimes" and other constitutional difficulties arise. In most nature democracies there are conventions permitting the monarch to consult "elder statesman" the presiding officers of the legislature, etc. The absence of such conventions in Nepal makes it desirable to provide a formal method of constitution, and the Council of States has been so composed as to meet this need. Apart from the executive function mentioned above, however, the functions of the Council of state will be purely advisory.

15. This is perhaps a convenient place to mention the problem of "crises". Where there is no written constitution, as in the United Kingdom, the problem is easily solved. A Parliament with unlimited power, not bound by any formal procedure, and controlled by the Government through its party majority, can within a couple of hours pass all the legislation that may be considered necessary; and there is no doubt that, if Parliament cannot meet, the Queen of the United Kingdom has ample power at common law to do what is necessary on the government. A written Constitution, on the other hand, contains checks and balances, designed for normal times, which become slogs and fetters when the country is in danger. It

must, therefore, contain "escape clauses" of sufficient width to enable crises to be met with immediate action even if, were there no crises, it would be unconstitutional so to act. The ultimate responsibility must inevitably be placed on His Majesty -- and that is one reason for establishing a Council of State which he can consult. To provide merely for the suspension of the constitution would, however, require His Majesty to produce an extreme remedy for what might be a simple case of minor Constitutional breakdown. It would, for instance, be undesirable to equip him with power to suspend the Constitution merely because, owing to a conflict of parties, or conflicts about leadership within parties, it was impossible to find a Prime Minister who had the confidence of the House of Representatives. It has therefore been thought desirable to envisage three possibilities :-

1) The simplest case is that just mentioned, when owing to a conflict of parties, or conflicts within parties, it is impossible to appoint a responsible Government. This is the case contemplated by Article 22. It provides in effect for a temporary suspension of Cabinet Government and enables His Majesty's Government to be carried on for a period of twelve months, or until after a general election, whichever is the shorter.

2) The more difficult case is a breakdown of the parliamentary machinery, due perhaps to a conflict of parties which made it impossible to pass the Budget and thus threatened to overthrow the whole structure of constitutional government. This case is covered by Article 59. If it were possible to continue with one House of Parliament, that would be done; if not, both Houses would be suspended but again the suspension would be temporary.

3) The most extreme case would be that of a complete breakdown due to war internal disturbance, or economic distress. The topography of Nepal is such that the country might be physically split, and any meeting, even of the Council of State, rendered impracticable. This cause is covered by Article 58.

The circumstances contemplated are, of course highly exceptional it may never be necessary to use the powers thus conferred; but it would be the height of folly not to provide for contingencies, however remote they may now appear.

Parliament

16. The provisions of Part V of the Draft Constitution contain little variation from the standard formula adopted in other democratic constitutions. Article 27 provides that, in the first instance, there shall be 109 members of the House of Representatives, though this number may be altered by Act of Parliament. The number was chosen because it was ascertained from the Delimitation Commission that it was convenient, given the present administrative boundaries (which are relevant because local officials have to take charge of elections on behalf of the Election Commission),

the difficulties of communication, etc. The average population per constituency will be about 85,000, but there will have to be wide variations. The proportion is much the same as in other countries, were communications are much better and elections much more easily conducted. It is estimated that elections will have to be spread over six weeks because of the difficulty of staffing and policing the polling stations.

17. The senate, whose composition is determined by Articles 24 to 26, is based on that of Ceylong, which in turn was based on that of Burma. It is desirable that the Cabinet should be responsible to one House only and clearly this must be the House of Representatives; a system of responsibility to both Houses could not work without a series of intricate rules of a series of highly developed constitutional conventions. Neither being practicable in Nepal, the House of Representatives should have clear primary, and hence the Senate must not be a directly elected body. On the other hand, a Senate elected by the House of Representatives by single transferable vote would be a mere copy of that House, on a smaller scale. To produce a Senate which would be different from the House of Representatives, but not so different from the House of Representatives, but not so different as to be in constant conflict with it, the arrangement proposed is that half should be elected by the House of Representatives by single transferable vote and half nominated by His Majesty, on the recommendation of the Prime Minister. After the first elections and nominations, however, there would be elections and nominations every second year, with the result that the uniformity produced at the outset (when the machinery of democracy was getting under way) would not be repeated thereafter. A) the first election a group would require only seven votes; thereafter it would require nineteen votes; but the changes in party strength would produce constant variations, both by election and by nomination.

18. The relations between the Houses are similarly adopted from those of Burma and Ceylon. Primacy has to be given to the House of Representatives, lost deadlock be produced. The fundamental precaution is that of Article 56, which requires that an amendment to the Constitution be supported by (a) two-thirds of all the members of the House of representatives, (b) a majority of the Senate, and (c) His Majesty, acting in his discretion. Hence the majority of the House of Representatives, though capable of overriding the Senate, must act within the confines of the Constitution; and the people can turn out the majority of the House of Representatives within five years.

19. The provisions of Chapters I to IV of Part V are so much common form in democratic Constitutions that only one point need be mentioned. Section 34 enables the House of Representatives to elect as Speaker a person who is not a member of that House and provides that, if a member of the House is elected, his seat shall become vacant (and another member would be elected in his place). This arrangement has been taken from the Constitution of Ghana, and it has two reasons. First, it may be different to find, among 109 members, a member who has such knowledge of parliamentary

procedure that he can easily exercise the responsible functions of Speaker. Secondly, if a member of the House is elected, he cannot effectively and not as an impartial Speaker and as a political representative of his constituents. Various compromises are adopted by convention in the United Kingdom, but they cannot be adopted in Nepal at this stage. Accordingly it seems better, as in Ghana, to modify to traditional formulas and to provide for alternative representation of Mr. Speaker's constituency.

20. There is nothing new in Chapters V and VI of Part V of the Constitution. The financial procedure of the Government of India Act, 1935, adopted by India, does not seem to have justified the variations from the traditional system. Pakistan made a partial return, to the United Kingdom system, but it is complicated by relics of the Government of India Act. It seemed that a simplified version of the British System would best suit the conditions of Nepal. The essence has been retained without the complications which have resulted from a long constitutional history.

21. Full legislative power is given by Article 55, but it must be qualified by the other provisions of the Draft Constitution notably the Chapter on Civil Liberties. Under Article 56, on amendment to the Constitution requires :-

1) the support of two-thirds of all the members of the House of Representatives;

2) the support of a majority of the Senate; and

3) the Royal assent, given by His Majesty in his discretion.

The provisions of Articles 57, 58 and 59 have already been mentioned.

The Judiciary

22. There is nothing unusual in Part VI. The usual protection for the Supreme Court is given by Article 60, and reference should also be made to clause (2) of Article 39. Since the Supreme Court may declare Acts of Parliament to be invalid, a rapid procedure is desirable. This is provided partly by Article 57, partly by Article 61 (which is taken from the Constitution of India, Article 228, and in wider than the corresponding provisions in section 225 of the Government of India Act, 1955), and partly by the Supreme Court Ain, 2013.

The Public Service

23. The normal rule for servants of the Crown is stated in Article 63, but it must be read subject to any Act of Parliament made under Article 64 and to the powers of the Public Service Commission in Article 66. An independent Public Service Commission is to be established by Article 65, and its powers are specified in Article 66. The latter confers executive power on the Commission as in Ceylon. The alternative of making a recommendation to His Majesty was rejected because, in that form, His Majesty would be

bound by the recommendation (see Clause (2) of Article 15), and the provision would merely give His Majesty of good deal of unnecessary labour. If the powers were to make proposals to His Majesty, the exercise of the power would depend on decisions, by Ministers; and experience in other democratic countries has shown that political considerations, or even party patronage, might then be brought in. To vest the powers of appointment, dismissal, etc., in His Majesty in his discretion would require His Majesty to have a substantial staff, not under Ministerial control, for establishment questions. The Ceylon provision therefore seems to be most convenient.

24. Part VIII, dealing with Audit of Accounts, is in the standard form. The Interim Constitution created an official called the "Comptroller and Auditor-General", though he was apparently given no functions as Comptroller and was in fact to be Auditor-General. There are some advantages in having an independent official to control issues of public money, as in the United Kingdom, but it seems an unnecessary complications in Nepal. Accordingly, article 67 makes the official merely and "Auditor-General", and Article 68 does not confer upon his any control over issues of Public money.

MISCELLANEOUS

25. The provisions of Chapter I of Part II relate to His Majesty's powers and have already been referred to. The incorporation of the Nepal Laws (Interpretation) Act, 2010 into Article 75 will explain some apparent omissions in the Draft Constitution, e.g., the term "Oath" in Article 74 includes an affirmation or a declaration in the case of a person authorised by law to make it.

Transitational Provisions

26. The transitional provisions are comparatively simple because the necessary powers must clearly be vested in His Majesty, as is done by Article 77, Article 78 has already been referred to, but it must again be mentioned that it would ease the task of the Courts, and make the law more certain if some Proclamations could be issued before the appointed day.

CONCLUSION

27. In respect of drafting, the Constitutional Commission has had two objectives, to keep the Draft Constitution short and flexible, and to make the language as simple as the exigencies of legal interpretation allowed. The temptation to insert provisions which would be useful in present conditions, but not necessary, has been resisted because those conditions are likely to change rapidly. On the other hand, an attempt has been made to foresee what difficulties may possibly occur and to provide the powers necessary to meet them.

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Unpublished

Appendix 13

(Abstract Translation)

Nepal Special Arrangement Act 2017 V.S. (1961 A.D.)

Nepal Gazette

Vol. 10. Poush 29, 2017 V.S. Special Issue 22.

1.

(1) This Act is known as 'Nepal Pisesha Byabastha Ain 2017.

(2) This Act shall come into force under Art. 55 (3) of the Constitution of the Kingdom of Nepal.

(3) This Act has come into force from Poush 1, and at any time this Act can be repealed by the Royal Proclamation.

2.

The executive power of the Kingdom of Nepal shall be exercised in accordance with this Act and the other laws for the time being in force by His Majesty either directly or through Ministers or other officers subordinate to him.

3.

(1) To aid and advise the King in the exercise of his functions, a Council of Ministers was to be formed.

(2) The question whether His Majesty has consulted Ministers or not, shall not be inquired into any court.

4.

(1) His Majesty shall appoint Ministers and Assistant Ministers on his own discretion.

(2) Every Minister and Assistant Minister shall hold Office during the pleasure of His Majesty the King.

(3) Remuneration of the Ministers of the Crown and of the Assistant Ministers shall be determined by His Majesty the King.

(4) The Ministers of the Council of Ministers shall be collectively responsible to His Majesty for their advice and work.

5.

(1) All executive action to be done by His Majesty in his own discretion under this Act, shall be expressed to be taken in the name of His Majesty's Government.

(2) Orders, decisions and other instruments made and executed in the name of His Majesty or His Majesty's Government shall be authenticated in such manner as may be specified in rules to be made by His Majesty, and the validity of an order, decision or instrument which is so authenticated shall not called in question on the ground that it is not an order, decision, or instrument made or executed by His Majesty in his discretion or by His Majesty's Government as the case may be.

(3) His Majesty in his discretion may authorise the issue of Regulations for executive Business specifying the distribution of functions and the manner in which he proposes to exercise his functions.

or

The allocation of business and the transaction of business, of the executive of the Kingdom of Nepal shall be done in accordance with the rules approved by His Majesty in his discretion.

6. Duties of the Ministers : Every Minister has the following duties --

(a) to communicate to His Majesty all the administrative work of the Kingdom of Nepal executed by their respective departments;

(b) to furnish such information as His Majesty might demand regarding the administration of the Kingdom of Nepal; and

(c) to execute all the actions ordered by His Majesty the King regarding the administration of the Kingdom of Nepal.

7. Chairmanship :

According to this Chapter there shall be a Council of Ministers under the Chairmanship of His Majesty the King.

Provided that His Majesty may designate any Minister to be the Chairman.

8. Legislative Powers :

(a) For the stable government of Kingdom of Nepal any Act can be operated.

(b) According to sub-clause (1) His Majesty in his discretion or with the consent of the Council of Ministers can enforce any Act under Article 55 of the Constitution of the Kingdom of Nepal.

9. Financial Procedure :

(1) No expenditure shall be incurred out of the Consolidated Fund or any other public Fund or any money provided by the Constitution of the Kingdom of Nepal or an Act made under the authority.

(2) No loan shall be raised on the security of the Consolidated Fund or other Public fund or money except by credit authorised by Act.

(3) Nothing in this article, shall apply to the Private Revenues of His Majesty, or to expenditure out of such revenues.

10. Consolidated Fund :

(1) All revenues by His Majesty, other than his private revenues, the produce of all taxation other than local taxation, all loans raised on the security of the public revenues, and all money received in repayment of any such loan made under authority of an Act shall, be credited to a Public Fund to be known as the Consolidated Fund.

(2) No change shall be made out of the Consolidated Fund except in cases where it is specifically mentioned in the Constitution of the Kingdom of Nepal or in any law for the time being in force in Nepal that such amount shall be charged out of this Fund or where it is provided in the law of Nepal that the amount shall be charged out of the Consolidated Fund or where it is to operate according to the budget approved by His Majesty the King.

11. A Budget containing the Estimated Financial particulars of governmental income and expenditure shall be prepared for every financial year and that budget shall include the following particulars:-

(a) the estimate of revenue on the basis of the available source of the preceding year;

(b) the effect of proposed changes in laws relating to taxation;

(c) sums to be charged out of the Consolidated Fund;

(d) sums provided in the form of debts; and

(e) expenditure necessary to be charged out by the approval of His Majesty the King.

(2) The expenditure to be charged out according to the approval of His Majesty the King shall be specified under a separate head or a sub-head and the amount necessary to be charged out shall be appropriated according to the head concerned and all these shall be included in the appropriation bill to be presented to His Majesty for His approval.

12. Supplementary Budget :

(1) Notwithstanding the provisions of Section 9 and 11, if any sum authorised to be spent for any service as specified under Appropriation Act is found inadequate, His Majesty the King is empowered to authorise the expenditure necessary for the purpose.

(2) According to sub-section (1) if the sum is spent in accordance with the approval of His Majesty the King or if additional expenditure is to be made for any service or for a new service, the supplementary estimate as specified under the head and the sub-head of expenditure shall be included in the supplementary appropriation bill and must be forwarded to His Majesty the King for His approval.

13. The regulations for the fulfilment of the purposes of this law, shall be framed by the approval of His Majesty the King.

Royal Seal (Royal Confirmation)

Date: 29th Poush, 2017
(Jan. 13, 1961)

By order:
Krishna Prasad Uphadhya,
Secretary to His Majesty's
Government for Law and
Parliamentary Affairs.

Nepal Gazette: Vol. 10. Extraordinary Issue 22.
Poush 29, 2017 V.S.

Unpublished

Appendix 14

Joint Statement of 11 Members of the National Panchayat

(National Legislature)

Full eight years have elapsed since His Majesty took over full responsibility on his own shoulders and the reins of the country's leadership in his own hands. There can be no doubt that under His Majesty's leadership, Nepal has, during this period, scored important achievements in the sphere of foreign policy and gained a place of honour in the comity of nations. Internally also, it has gained a sense of national resurgence. His Majesty started the experiment of partyless Panchayat democracy in order to materialize the democratic aspirations of the people and bring about a society free from exploitation. The Nepali people, true to their boundless faith in and loyalty to the Crown, accepted this experiment unreservedly. However, in course of time, various shortcomings have begun to appear in the working of the Panchayat system and even in the implementation of the provisions of the Constitution. The democratic aspects of the Panchayat system have not yet assumed a concrete shape. Nor does the progress in the economic and political fields offer encouraging prospects for the future.

Economic Picture : Although a long time has passed since the commencement of the second Five Year Plan with the expiry of the Three Year Plan, there has been no improvement in the living standard of the masses. The purchasing capacity of the people is declining every day because of the soaring prices of essential commodities of daily use, including foodgrains. Agriculture constitutes the chief source of production in our country, but there has been no increase in agricultural production. The majority of industries running in both the private and the public sectors are not operating smoothly and are incurring losses. Compulsory savings deposited by the people with full trust in the Majesty's Government are not only not being utilized properly, but are also being misappropriated. Except for a few projects completed with foreign aid, there is hardly any project completed with our own efforts.

The people enthusiastically responded to the personal call of His Majesty for the construction of the East-West Highway by offering volunteer labour and contributions. But ultimately we were compelled to seek the assistance of friendly countries in the construction of this highway. The land reform program, the new Legal Code, and the "Back To The Village" National Compaign have been described as the most notable achievements of the present system. But the people have not been able to derive immediate and direct benefits from these measures, owing to lack of planning, improper management and lack of firmness in execution.

We have nothing to say if sermons are preached for the sake of sermons or if legislation is enacted for legislation's sake. If, however, a law is meant for actual enforcement, we should enforce

it as such, instead of merely publicizing it. One law not yet enforced in our country is the Guthi Land Tenure Act. What is stopping the enforcement of this law, which has already received royal assent? Similarly, another law relating to land reform is being sought to be enacted even when the original lands Act has not yet been enforced all over the country. This is hardly consistent with our objective to establish a rule of law in our country. Legal ambiguities as well as negligence on the part of law enforcers have made it difficult to make timely evaluation of our forest wealth. The Government claimed that it had nationalised forests, but the public continued to lay claim to forests on the ground that they were still continuing to pay taxes on them. On the one hand, the Government auctions forest lands which it claims to be its property. But on the other hand, the public reclaim and cultivate such forest lands. The inevitable result of this legal ambiguity and tussle has been the destruction of forests.

In the fiscal field, the so-called policy of revaluation rendered a serious damage to the national economy. This step not only hit the trade and industry of the country, but also caused serious hardship to the general public. The impractical customs policy adopted by the Government on the basis of the crude belief that increase in customs duty will necessarily augment customs revenue, without taking into account our open border with India as well as the psychology of the people, resulted in a heavy loss of revenue. His Majesty's Government was subsequently compelled to devalue the Nepali currency, although it had claimed in the budget statement of 1967-68 that revluation had not had any adverse impact on the national economy. It thereby revealed its ignorance, lack of foresight and immaturist in economic matters, and upset the economic balance in the country.

Political Picture : Turning to the political situation, a number of persons detained after December 15, 1960 have not so far been released in spite of the fact that a long time has already elapsed since the announcement of the withdrawal of the state of emergency. The problem of these political detenus is as burning as before.

In the past elections to the National Panchayat as well as to other tiers of Panchayats, the Security Act was frequently resorted to and open administrative interference was encouraged in order to serve the political interests of particular persons. The need for further enlarging the scope of elections and enabling the National Panchayat and other tiers of Panchayats to serve as an effective link between the administration and the public is still as pressing as ever. The tendency to rule through such tactics as intimidation, terror and temptation has dealt a heavy blow to the prestige of the Panchayat system. A systematic campaign calculated to make democracy a laughing stock and generate a sense of apathy among the masses is being conducted through the radio and government-controlled newspapers and magazines. Through the local administration, the people are not being allowed even to make use of fundamental rights guaranteed by the Constitution by means of open resort to intimidation, terror, threat, treachery, etc. The sermons being preached by persons who consider it their duty to make propaganda are like a message coming from a telephone the cable of which has already

snapped and which is not therefore understood by the masses. The propaganda is proving bitter for those listening to it, and is even dissipating their energies and making them indifferent. His Majesty himself has time and again emphasised that the success of the Panchayat system lies not in words but in deeds. But those assuming the responsibility for running the system are in the habit of giving secondary importance to matters which demand priority, and giving priority to those which are only of secondary importance, so that it is not clear where our path lies.

Persons responsible for running the Panchayat system have also attempted to distort the meaning of Panchayat democracy. Instead of encouraging and inspiring the people to make the most of fundamental rights, attempts are continuing to foster the impression that these rights are restricted to Panchayats and class organisations of different tiers. If it is not possible to openly air the grievances of the people through the medium of public meetings, the upper tiers of Panchayats established through indirect election under the partyless system will not only become isolated from the public, but will also remain shorn of democratic content. Democracy is an all-pervading principle; it is not a principle exclusively common to a particular country or a group of countries. The basic goals of democracy, whether it is of the Parliamentary or of other type, are always the same, though the means adopted to attain them may differ according to the circumstances prevailing in a country. His Majesty has declared that the basis of the Panchayat System is democracy and not totalitarianism. Our Constitution in fact guarantees individual liberty, and other fundamental rights, and provides for the rule of law as well as for an independent judiciary to enable citizens to secure constitutional remedy and other democratic safeguards, in addition to a Public Service Commission and the Auditor General's Office. Nonetheless, in contempt of universally accepted democratic principles and practices, it is being claimed that the Panchayat system is an original system. But any attempt on the party of any person to cover up his faults through such statements is not only to deceive himself but to cause harm to the system itself.

If we really desire to make the Panchayat system strong, it is necessary to invest every aspect of it with full democratic liberties. It is the responsibility of the administration to create a free and open atmosphere in which the people can fearlessly express their feelings within the limits of the law. If it is correct that the Panchayat system is based on our own tradition of solving all problems of the villages and imparting justice to villagers by holding meetings of persons chosen by themselves at an open and convenient place, then it must be admitted that this system can never flourish in a suffocating and secret atmosphere. An atmosphere of fear and distrust still prevails in the country. No matter how loudly we talk of the need for clean conduct and morality, national character cannot be built up in an atmosphere dominated by fear, intrigue and mutual suspicion, nor can democratic aims be achieved. The different tiers of Panchayats constitute the organs of local and national level administration. It is therefore obvious that these bodies cannot function as a countrywide political organisation for channelizing the energies of political forces and guiding them.

His Majesty has from time to time talked of the importance of a countrywide political force to channalise the public energies towards the task of national reconstruction in an uninterrupted manner. It was probably in realisation of the importance of such an organisation that His Majesty had, in a special meeting of the Council of Ministers on Bhadra 16, 2021 (August 31, 1964), issued directives in which he called for the mobilization of workers all over the country to work for the partyless Panchayat system. The establishment of the National Guidance Council was probably intended to facilitate the achievement of this objective. Since this Council has been dissolved now, there does not exist any force except the Crown which can initiate steps to mobilize the political forces and guide them. A national program must be formulated and explained to the public, and only persons who understand it well should be encouraged to seek election to different levels of Panchayats. However, instead of doing so, provisions have been made enabling a particular set of individuals to contest elections without a program with the result that the Panchayat politics is now dominated by the personal political interests of individuals. His Majesty introduced the partyless system because under the party system party interests outweigh national interests. The appearance of mean groupism and personal politicking in this system does not therefore augur well for the future.

Efforts should have been made for evolving a collective leadership and mass organization at the national level led by His Majesty and based on a national program setting out the political, economic and social objectives and the means to attain them. But instead of such an organisation, there have emerged selfish political groups based on communal, sectarian and parochial feelings. The absence of an all-embracing national program as well as the lack of courage to come forward independently with a program and work among the masses have also hampered the progress of class and professional organisations.

Some Concrete Suggestions For Strengthening The Basis of Panchayat Democracy

1. Expansion of the Basis of Election : Members of the National Panchayat should be elected directly from the district on the basis of adult franchise or through Village Panchayats.

2. Impartial Elections : Even after the formation of the Election Commission, elections have not been held in an independent and impartial manner at certain places. The democratic foundation of the Panchayat system has thereby received a blow. In case the people are to be made aware of the glory of the partyless system in an effective manner, it is essential that unauthorized and indirect interference by the administrative machinery as well as by persons in the Government should be stopped.

3. Encouragement For The Exercise of Civil Rights : Since persons in the Government have not been able to establish contact with the people through public meetings, an atmosphere conducive to the Panchayat democracy has not been created so far.

4. Determination of Limits to the Exercise of Powers Under Public Security Act : An atmosphere of fear, suspicion and instability

prevails in the country because of the arbitrary exercise of powers under the public Security Act. These powers should be exercised only in circumstances of real danger. Moreover, it is essential that legal provisions should be made to insure that the period of detention of persons detained under the Public Security Act is not merely extended after the expiry of six months, but that a judicial hearing should also be held of the charges levelled against such persons, and that no person is detained for more than 18 months under this Act.

5. Release of Political Prisoners and Return of Exiled Persons : Persons kept under detention since December 15, 1960 should be released. It will eventually prove to be in the interests of the country and the Panchayat system to provide an opportunity to persons who for political or other reasons are living in foreign countries to participate in the system as long as they desire to engage themselves in the service of the Crown and the motherland, renouncing their political prejudices and pledging allegiance to the system.

6. Safeguard of Constitutional Privileges Relating to Fundamental Rights : Since the practice of enforcing all kinds of laws under the plea of the public interest has deprived even the Supreme Court of its constitutional right to ascertain whether the enforcement of such laws has encroached upon the fundamental rights or whether such acts clash with the Constitution, efforts should be made to avoid as far as possible the use of the term "public interest" in the preambles of bills moved in the National Panchayat, so that the constitutional privileges relating to the fundamental rights of the people may be safeguarded.

7. Mobilization of Public Force : Instead of arousing national unity in a broadbased manner, parochialism, sectarianism and groupism for the fulfillment of personal interests are rampant. Public and comprehensive provisions should be made for mobilizing and directing the public energies within the limits of existing legal and constitutional guarantees, so that this unhealthy atmosphere may be dispelled, the declared objectives of His Majesty may be fulfilled, personal liberty and fundamental rights may be promoted, and the country may be taken ahead by implementing political, social and economic programs through the medium of the "Back To The Village" National Campaign by organizing conscious and active workers. It is therefore essential that an affective Central Committee independent of the Executive should be formed as an instrument to provide collective leadership in the public field.

8. The proceedings of the National Panchayat should be open.

9. Implementation of the Principle of the Rule of Law : In case the administration implements in practice the principle of rule of law, the people will develop deep faith in this principle, a feeling of security will grow stronger among them and the democratic basis of the system will be strengthened.

10. There should be a Clear Line of Demarcation Between Politics and the Administration : While on the one hand the administrative

machinery is directing politics of interfering in it, persons who direct the administrative machinery are trying to make the administrative machinery their tool rather than to make it efficient. The administration is thus getting mixed with politics. This kind of situation is obstructing the smooth development of a healthy administration and a democratic political life. It is necessary therefore that a clear line of demarcation should be drawn between politics and the administration.

11. Economy in Administration : Instead of promoting the efficiency of government officials and making the administration quick the present administrative machinery has been made extremely expensive by constantly increasing the number of offices and employees. Necessary reforms should be introduced in the administration from the viewpoints of both economy and efficiency.

12. Some Measures for Raising Revenue : The Government should adopt some other measures and policies for implementing public welfare programs relating to development, instead of raising taxes which directly affect the people. The following measures may prove effective in this regard:

(a) Politics Relating to Customs And Taxes : Only a policy of fixing the rates of customs duties in such a manner that the tendency of evading them is curbed will prove effective in checking smuggling along the open and unrestricted Nepal-India border. In case customs duties are fixed in a practical manner, so that the temptation of income proves less strong than the difficulties and dangers involved in evasion, cases of smuggling will decrease, thus leading to a rise in customs revenue. It is through this psychological experiment with the tendency of evading customs duties that revenue from income tax and other taxes too will increase.

(b) Revenue from intoxicants can be raised by many times if effective restrictions are imposed upon illicit breweries and unlicensed distillation of liquor is prohibited by introducing necessary amendments in the Intoxicants Act.

13. Consolidation of Land Reform Program : The objectives of bringing about an economic revolution through the Land Reform Program cannot be fulfilled so long as measures for augmenting agricultural production and achieving industrial progress are not executed. Well-planned measures should be implemented for the development of cooperatives, consolidation of holdings, provision of such facilities as irrigation, fertilizers, improved breeds of cattle, improved seeds, measures for checking animal diseases and encouragement for adopting scientific methods of cultivation and developing cottage industries, so that farm labourers and landless peasants may find employment during their spare time and be able to work in the rural atmosphere. Preliminary steps in this regard may be started by properly utilizing the compulsory savings which are either lying idle or being misappropriated.

14. The Industrial Policy should be made Clear : Though the declared policy of the Government is to divert capital from land to industry

as well as to encourage foreign capital if necessary for expediting the industrial development of the country, yet the existing industries are running in loss and difficulties are being faced in opening new ones. It is thus essential that a clear definition should be made as to what categories of industries should be run in the public or in the private sector, that the rates of excise duties on industrial production and those of customs duties on imported industrial goods should be fixed not only for promoting industries but also on a permanent basis, and that an industrial policy should be formulated and implemented which may insure necessary official cooperation in setting up industries producing goods with indigenous raw materials.

15. Th<u>e Opinion of the National Panchayat should be Sought before Appointing the Prime Minister</u> : In case His Majesty appoints the Prime Minister on the recommendation of the National Panchayat in accordance with the amended Constitution, a tradition will be established under which His Majesty will not be held responsible for administrative lapses.

16. <u>A Minimum Holding should be Fixed</u> : The minimum unit of land ownership for every peasant family should be determined for augmenting production and achieving economy.

17. <u>Land Taxes should be Assessed in a Scientific Manner</u> : Land taxes should be assessed after grading lands on the basis of productivity. The land tax schedule be made progressive, so that land taxes are automatically realized at the lowest possible rate from peasants who own small holdings, and at progressively higher rates on the basis of income from peasants who own larger holdings.

18. <u>Decentralization</u> : Village and District Panchayats should be vested with full administrative powers except those relating to law and order as well as with the responsibility of implementing local development programs, so that they may perform all development and administrative duties independently in their respective areas.

19. The National Panchayat Committees should be made effective.

1. Rishikesh Shaha	.. Graduates' Constituency
2. Ram Hari Sharma	.. Peasants' Organization
3. Birendra Keshari Upadhyaya	.. Graduates' Constituency
4. Prayag Raj Singh Suwal	.. " "
5. Ratna Prasad Kharel	.. Bagmati Zone
6. Kishore Chandra Dhungana	.. Narayani Zone
7. Tilak Raj Shahi	.. Seti Zone
8. Pitambar Dhwaj Khati	.. Lumbini Zone
9. Bam Bahadur Kathayat	.. Youth Organization
10. Dambar Bahadur Basnyat	.. Sagarmatha Zone
11. Ang Dandi Lama	.. " "

Appendix 15

First General Elections Result issued by the Election Commission of Nepal

Name of Political parties	Total Voters	Casted Votes	Secured votes	Total number of seats	Total seats
Nepali Congress	4241042	1791480	666998	108	74
Nepal Rastravadi Gorkha Parishad	"	"	306118	88	19
Samuktya Prajatntrika Party	"	"	177508	86	5
Nepal Communist Party	"	"	129142	47	4
Nepal Praja Parishad (Achaya Group)	"	"	53038	46	2
Nepal Praja Parishad (Misra Group)	"	"	59820	26	1
Swatantra (Independents)	"	"	291149	269	2
Nepali National Congress	"	"	12707	20	x
Nepal Terai Congress	"	"	36107	21	x
Nepal Prajatantrik Mahasabha	"	"	59894	69	x
10	4241042	1791480	1791480	780	108

Notice issued by the Election Commission of Nepal.
Nepal Gazette, Vol. 9, No. 4, Baisakh 28, 2016.

* List of the Voters for the National Panchayat from the various Districts

Zone	Districts	List of voters	Total
Mechi	Taplejunj	11 + 1	
	Panchthar	11 + 1	
	Ilam	11 + 1	
	Jhapa	11 + 1	48
Kosi	Sankhuwa Sabha	11 + 1	
	Terhathum	11 + 1	
	Dhankuta	11 + 1	
	Morang	11 + 1	
	Sunsari	11 + 1	60
Sagarmatha	Solokhumbu	11 + 1	
	Bhojpur	11 + 2	
	Khotang	11 + 1	
	Okhaldhunga	11 + 1	
	Udayapur	11 + 1	
	Saptari	11 + 2	
	Siraha	11 + 2	89
Janakpur	Dolakha	11 + 1	
	Ramechhap	11 + 1	
	Sindhuli	11 + 1	
	Dhanusha	11 + 2	
	Mahotari	11 + 2	
	Sarlahi	11 + 2	75

(Continued)

* Based on the Report of the Election Commission.

Appendix 16 (continued)

Zone	Districts	List of voters	Total
Bagmati	Sindhupalchok	11 + 2	
	Rasuwa	11 + 1	
	Kavrepalchok	11 + 2	
	Lalitpur	11 + 1	
	Kathmandu	11 + 2	
	Nuwakot	11 + 1	
	Dhadhing	11 + 1	99
Narayani	Makwanpur	11 + 1	
	Rautahat	11 + 2	
	Bara	11 + 1	
	Parsa	11 + 1	
	Chitwan	11 + 1	61
Gandaki	Gorkha	11 + 2	
	Manag	11 + 1	
	Lamjung	11 + 1	
	Kaski	11 + 1	
	Parbat	11 + 1	
	Tanahu	11 + 1	
	Syangja	11 + 2	86
Lumbini	Gulmi	11 + 2	
	Palpa	11 + 2	
	Arghakhanchi	11 + 1	
	Nawalparasi	11 + 1	
	Rupendihi	11 + 1	
	Kapilvastu	11 + 1	74

(continued)

Appendix 16 (continued)

Zone	Districts	List of voters	Total
Dhaulagiri	Mustang	11 + 1	
	Dolpa	11 + 1	
	Myagdi	11 + 1	
	Baglung	11 + 1	48
Rapti	Rukum	11 + 1	
	Rolpa	11 + 2	
	Piuthan	11 + 1	
	Salyan	11 + 1	
	Dang Deokhuri	11 + 1	61
Karnali	Mughu	11 + 1	
	Tibrikot	11 + 1	
	Humla	11 + 1	
	Jumla	11 + 1	48
Bheri	Jajarkot	11 + 1	
	Dailekh	11 + 1	
	Surkhet	11 + 1	
	Banke	11 + 1	
	Bardia	11 + 1	60
Seti	Bajura	11 + 1	
	Bajhang	11 + 1	
	Achham	11 + 1	
	Doti	11 + 1	
	Kailali	11 + 1	60
Mahakali	Darchula	11 + 1	
	Baitadi	11 + 1	
	Dadeldhura	11 + 1	
	Kanchanpur	11 + 1	48

Appendix 16

(II)

* List of the members of the Primary Organization of the various Class Organizations ; (2027/28 V.S. Election)

Zone	Districts	NPO Total	NYO Total	NWO Total	NLO Total	INESO Total
Mechi	Taplejunj	24	20	11	x	11
	Panchthar	48	50	28	x	28
	Ilam	36	44	44	x	30
	Jhapa	43	34	31	1*	11
	Sankhuwa Sabha	13	13	x	x	x
	Terhathum	23	26	21	x	12
Kosi	Dhankuta	30	40	20	x	13
	Norang	48	51	66	x	x
	Sunsari	41	39	17	56*	2
	Solokhumbu	19	11	13	x	11
	Bhojpur	18	17	22	x	20
	Khotang	24	26	17	x	12
Sagarmatha	Okhaldhunga	24	29	16	x	14
	Udeyapur	45	46	17	x	5
	Saptari	70	76	24	x	x
	Siraha	31	33	12	27*	x
Janakpur	Dolakha	17	15	16	x	12
	Ramechhap	24	20	14	x	17
	Sindhuli	36	31	18	x	11
	Dhanusha	19	35	11	x	x
	Mahotari	31	42	17	x	4
	Sarlahi	33	7	5	29*	4

(continued)

* Based on the Report of the Election Commission, 2029 V.S.

Zone	Districts	NPO Total	NYO Total	NWO Total	NLO Total	INESO Total
Bagmati	Sindhupalchok	35	36	11	x	x
	Rasuwa	14	14	14	x	x
	Kavrepalchok	15	28	20	x	11
	Bhaktpur	26	27	16	x	12
	Lalitpur	24	26	18	x	17
	Kathmandu	76	74	109	x	56
	Nuwakot	26	11	13	x	11
	Dhadhing	23	18	14	24*	3
Narayani	Makwanpur	20	23	13	x	11
	Rautahat	40	44	16	x	x
	Bara	40	44	18	x	x
	Parsa	54	47	14	x	x
	Chitwan	24	17	16	36*	11
Gandaki	Gorkha	19	11	14	x	12
	Manag	2	4	5	x	x
	Lamjung	26	34	25	x	11
	Kaski	37	30	10	x	19
	Parbat	21	19	22	x	9
	Tanahu	12	36	19	x	13
	Syangja	37	57	29	x	19
Lumbini	Gulmi	18	27	16	x	11
	Palpa	21	33	18	x	13
	Arghakahnchi	23	12	12	x	16
	Nawalpaeasi	26	25	12	x	6
	Rupendihl	23	13	10	x	14
	Kapilvastu	14	16	10	20*	4

(continued)

Zone	Districts	NPO Total	NYO Total	NWO Total	NLO Total	NESO Total
Dhaulagiri	Mustang	14	13	12	x	9
	Dolpa	15	15	15	x	x
	Myagdi	20	24	17	x	12
	Baglung	34	33	19	x	15
Rapti	Rukum	12	13	12	x	4
	Rolpa	13	13	15	x	4
	Piuthan	7	11	3	x	1
	Salyan	18	18	13	x	9
	Dang-deo-Khuri	9	17	12	x	x
Karnali	Mugu	17	18	16	x	x
	Tibrikot	11	11	x	x	x
	Humla	15	15	15	x	x
	Jumla	19	26	6	x	1
Bheri	Jajarkot	21	22	22	x	x
	Dailekh	15	18	17	x	12
	Surkhet	15	12	12	x	x
	Banke	12	22	19	x	6
	Bardia	19	13	11	37*	3
Seti	Bajura	15	14	16	x	x
	Bajhang	13	24	16	x	x
	Achham	14	17	x	x	x
	Doti	13	22	11	x	x
	Kailali	25	17	12	x	x

(Continued)

Zone	Districts	NPO Total	NYO Total	NWO Total	NLO Total	NESO Total
Mahakali	Darchuls	22	21	12	x	x
	Baitadi	27	12	21	x	11
	Dadeldhura	18	26	12	x	x
	Kanchanpur	19	18	12	x	x

Abbreviation:

NPO = The Nepal Peasant's Organisation
NYO = The Nepal Youth Organisation
NWO = The Nepal Women's Organisation
NLO = The Nepal Labour Organisation
NESO = The Nepal Ex-Service Men's Organisation

* According to the Report of the Election Commission Office, there are Mills and factories in Nepal. In this basis, Nepal Industrial Labour Organisation have 298 elected membered elected on the basis of Primary levels, of 114 mills and factories of Nepal.

In the Nepal Yatayat Mazadoor Sangathan Central Committee has been composed of 361 elected members.

Based on the Report of Election Commission, 2029 V.S.

*List of the various number of voters and casted votes in the last election for Class Organisations and Professional Organisations for the National Panchayat in the year 2028/29 V.S.

Graduates' Constituency

Year of Election	Number of Voters	No. of Votes Polled
2028 V.S. (1971)	9,969	6,872
	The Nepal Peasant's Organisation	
2029 V.S. (1972)	814	719
	The Nepal Youth Organisation	
2028 V.S. (1971)	818	733
	The Nepal Women's Organisation	
2028 V.S. (1971)	774	642
	The Nepal Labour Organisation	
2028 V.S. (1971)	511	436
	The Nepal Ex-Service Men's Organisation	
2028 V.S. (1971)	682	613

* Based on the Report of the Election Commission, 2029 V.S.

Appendix 17

List of the various Ministries and their members from 1951 to 1971 A.D. (2007 to 2028 V.S.)

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1. Rana - Congress Coalition Government 18 February - 12 November 1951

(a) 1. Shri Tin Maharaja Mohan Shamsher JBR - Prime Minister
2. Babar Shamsher JBR - Minister
3. Chudaraj Shamsher JBR - "
4. Nripa Jang Rana - "
5. Yagna Bahadur Basnet - "
(b) 6. B.P. Koirala - "
7. Suvarna Shamsher JBR - "
8. Ganesh Man Singh - "
9. Bhadrakali Misra - "
10. Bharatmani Sharma - "

2. Nepali Congress Ministry 16 November 1951 - 10 August 1952

1. M.P. Koirala - Prime Minister
2. S.P. Uphadhya - Minister
*3. Keshar Shamsher JBR - "
4. Suvarna Shamsher JBR - "
5. Naradmuni Thulung - "
6. Mahendra Bickram Shah - "
7. Maj. Gen. Sharada Shamhser JBR "
8. Bhadrakali Misra - "
9. Mahabir Shamsher JBR - "
10. Ganesh Man Singh - "
*11. Khadagaman Singh - "
*12. Bgavati Prasad Singh - "
*13. Nara Bahadur Gurung - "
*14. Dhrama Ratna Yemi - "

3. Advisory Regime 14 August 1952 - 14 June 1953

1. General Keshar Shamsher JBR - Chief Adviser
2. Maj. General Mahabir Shamsher JBR Adviser
3. Kagdagaman Singh - "
4. Lt. General Surendra Bahadur Basnet "
5. Kazi Manik Lal - "

4. M.P. Koirala's Rastriya Praja Party Ministry 15 June 1953 - 17 February 1954

1. M.P. Koirala - Prime Minister
2. Maj. Gen. Mahabir Shamsher JBR - Minister
3. Naradmuni Thulung - "
4. Tripurbar Singh - "
5. Surya Nath Das Yadav - "

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* Asterisk mark signifies non-Congress independent members.

5. National Cabinet 18 February 1954 - 2 March 1955

   1. M.P. Koirala (Rastriya Congress) - Prime Minister
   2. Major General Mahabhir Shamsher JBR - Minister
   3. Naradmuni Thulung - "
   4. Tanka Prasad Acharya (Praja Parishad) - "
   5. Dilli Raman Regmi (Rastriya Congress) - "
   6. Bahdrakali Misra (Jana Congress) - "
   7. General Keshar Shamsher (Independent) - "

6. Royal Advisory Government 14 April 1955 - 26 January 1956

   1. Sardar Gunjaman Singh - Principal Adviser
   2. Lt. Gen. Ananda Shamsher JBR - Adviser
   3. Guruju Bhogendra Raj - "
   4. Purendra Bickram Shah - "
   5. Anirudhra Prasad Singh - "

7. Tanka Prasad Acharya's Cabinet 27 January 1956 - 13 July 1957

   1. Tanka Prasad Acharya (Praja Parishad) - Prime Minister
   2. Balchandra Sharma - Minister
   3. Chuda Prasad Sharma - "
   4. Pashupati Ghose - "
   5. Sardar Gunjaman Singh (Independent) - "
   6. Purendra Bickram Shah - "
   7. Anirudhra Prasad Singh - "

8. Dr. K.I. Singh's Cabinet 26 July - 14 November 1967

   1. Dr. K.I. Singh - Prime Minister
   2. Purendra Bickram Shah - Minister
   3. Parsuram Bhakta Mathema - "
   4. C.B. Singh - "
   5. Dambar Bahadur Singh - "
   6. Ramdhin Mahato - "
   7. Jiva Raj Sharma - "
   8. Kul Bahadur Limbu - "
   9. Bhupal Man Singh Karki - "
   10. Padma Nrashing Rana - "
   11. Laxmi Prasad Devakota - "

9. King Mahendra's Direct Rule 15 November 1957 - 14 May 1958

10. Caretakar Government 15 May 1958 - 26 May 1959

    1. Suvarna Shamsher (Nepali Congress) - Chairman
    2. Randhir Subba (Rastravadi Gorkha Parishad) - Minister
    3. Dilli Raman Regmi (Rastriya Congress) - "
    4. Chandra Bhusan Pande (Praja Parishad) - "
    5. Purendra Bickram Shah (Independent) - "
    6. Bhupalman Singh Karki (Independent) - "

11. Nepali Congress Government after General Election May 27 - 15 December 1960

    1. Bisheswar Prasad Koirala - Prime Minister

2. Suvarna Shamsher JBR	- Dy. Prime Minister
3. Ganesh Man Singh	- Minister
4. Surya Prasad Uphadhya	- "
5. Ram Narayan Misra	- "
6. Kashinath Gautam	- "
7. Parsunarayan Chaudhari	- "
8. Sivaraj Panth	- "
9. Prem Raj Angdambe	- Deputy Minister
10. Lalit Chand	- "
11. Dwarika Devi Thakurani	- "
12. Min Bahadur Gurung	- "
13. Jaman Singh Gurung	- "
14. Nev Bahadur Malla	- "
15. Yogendra Man Sherchand	- "
16. Tulsi Giri	- "
17. Shiva Pratap Shah	- "
18. Diwan Singh Rai	- "
19. Surya Nath Das Yadav	- "

12. Shri Bisheshwar Prasad Koirala formed the Minister of Nepali Congress under the provision of the Jana Pratinidhitwa Ain 2015 (People's Representatives Act 1958) and by the provisions of the Constitution of the Kingdom of Nepal 30 June, 1959 - 15 December, 1960

1. Bisheswar Prasad Koirala	- Prime Minister
2. Suvarna Shamsher JBR	- Dry. Prime Minister
3. Ganesh Man Singh	- Minister
4. Surya Prasad Uphadhya	- "
5. Ram Narayan Misra	- "
6. Kashinath Gautam	- "
7. Parsunarayan Chaudhari	- "
8. Siva Raj Panth	- "
9. Surya Nath Das Yadav	- "
10. Prem Raj Angdambe	- "
*11. Tulsi Giri	- "
12. Lalit Chand	- Deputy Minister
13. Dwrika Devi Thakurani	- "
14. Min Bahadur Gurung	- "
15. Jaman Singh Gurung	- "
16. Nev Bahadur Malla	- "
17. Yogendra Man Sherchand	- "
18. Siva Pratap Shah	- "
19. Diwan Singh Rai	- "

* Later on Dr. Tulsi Giri had resigned from the Ministership on September 15, 1960.

13. (a) Council of Ministers under the Chairmanship of H.M. the King Mahendra 26 December 1960 - 30 June 1962

1. Dr. Tulsi Giri	- Minister
2. Bishwa Bandhu Thapa	- "
3. Rishikesh Shah	- "

4.	Soorya Bahadur Thapa	- Minister
5.	Anirudhra Prasad Singh	- "
6.	Nageswar Prasad Singh	- Assistant Minister
7.	Khagendra Jung Curung	- "
8.	Kaji Man Limbu	- "
9.	Bhuban Lal Pradhan	- "
*10.	Kirti Nidhi Bista	- "

* Mr. Kirti Nidhi Bista, Assistant Minister, had joined his office on December 26, 1961.

(b) Council of Ministers enlarged 1 July 1962 - 2 April 1963

1.	Dr. Tulsi Giri	- Chairman
2.	Viswa Bandhu Thapa	- Minister
3.	Lalit Chand	- "
4.	Nageswar Prasad Singh	- "
5.	Veda Nanda Jha	- "
6.	Kirti Nidhi Bista	- "
7.	Bhuban Lal Pradhan	- "
8.	Sailendra Kumar	- Assistant Minister
*9.	Khagendra Jung Gurung	- "
10.	Prem Bahadur Sakya	- "
11.	Giri Prasad Budathoki	- "
12.	Khadga Bahadur Singh	- "

* Rishikesh Shah and Anirudhra Prasad Singh were dropped from the Council of Ministers (September 22, 1962) and Assistant Minister Khagendra Jung Gurung resigned on July 10, 1962.

(c) New Council of Ministers was formed headed by Dr. Tulsi Giri 2 April 1963 - 24 December, 1963.

1.	Dr. Tulsi Giri	- Chairman
2.	Soorya Bahadur Thapa	- Vice-Chairman
3.	Bhuban Lal Pradhan	- Minister
4.	Nageswar Prasad Singh	- "
5.	Kirtinidhi Bista	- "
6.	Vedananda Jha	- "
7.	Khadga Bahadur Singh	- "
8.	Sailendra Kumar	- Assistant Minister
9.	Giri Prasad Budathoki	- "
10.	Pushaker Nath Upreti	- "
11.	Nagendra Prasad Bisal	- "
12.	Kedar Man Byathit	- "
13.	Rajeswar Devakota	- "
14.	Shamsher Bahadur Thumbahampe	- "

(d) Dr. Tulsi Giri had resigned on December 24, 1963 but King Mahendra ordered Mr. Surya Bahadur Thapa to continue as Acting Chairman for further notification. This Council of Ministers without any change lasted till April 8, 1964.

(e) New Council of Ministers had formed with minor changes in the portfolios. Dr. Tulsi Giri retained the post of Chairmanship on 9 April 1964 - 25 January 1965

1. Dr. Tulsi Giri	- Chairman
2. Soorya Bahadur Thapa	- Vice-Chairman
*3. Viswabandhu Thapa	- Vice-Chairman
4. Dr. Nageswar Prasad Singh	- Minister
5. Bhuban Lal Pradhan	- "
6. Kirtinidhi Bista	- "
7. Vedanada Jha	- "
8. Khadga Bahadur Singh	- "
9. Nagendra Prasad Bisal	- Assistant Minister
10. Giri Prasad Budathoki	- "
11. Shamsher Bahadur Thumbahamphe	- "
12. Rajeswar Devakota	- "
13. Dil Bahadur Shrestha	- "
14. Sailendra Kumar	- "

* Later on Chairman of the National Panchayat, Mr. Viswabandhu Thapa, resigned from that post and had been appointed Vice-Chairman of the Council of Ministers on July 5, 1964. But he had resigned from this post also on 21 August, 1964.

14. (a) Mr. Soorya Bahadur Thapa became the Chairman from 26 January - 3 April 1969 with minor changes

1. Mr. Soorya Bahadur Thapa	- Chairman
2. Kirti Nidhi Bista	- Vice-Chairman
3. Bhuban Lal Pradhan	- Minister
4. Vedananda Jha	- "
5. Khadga Bahadur Singh	- "
6. Silendra Kumar Uphadhya	- Asstt. Minister
*7. Dil Bahadur Shrestha	- "
8. Nagendra Prasad Risal	- "
9. Pushaker Nath Upreti	- "
10. Kedar Man Byathit	- "
+11. Giri Prasad Budathoki	- "
+12. Shamsher Bahadur Thumhampe	- "

+ Minister without Portfolio.

(b) Portfolio changes announced on 16 June 1965

1. Soorya Bahadur Thapa	- Chairman
2. Kirti Nidhi Bista	- Vice-Chairman
3. Bhuban Lal Pradhan	- Minister
4. Vedananda Jha	- "
5. Nagendra Prasad Risal	- "
6. Kedar Man Byathit	- "
7. Shamsher Bahadur Thumbahampe	- "
*8. Dil Bahadur Srestha	- "
*9. Giri Prasad Budathoki	- "
+10. Sailendra Kumar	- "

+11. Kahdga Bahadur Singh - Minister

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* Dil Bahadur resigned on 21 January 1966.
* A noteworthy change in the reshuffle is that a minister has been made in charge of Defence Ministry after 1960
+ Minister without portfolio.

(c) H.M. reconstituted the Council of Ministers on 10 August 1966

1. Sorrya Bahadur Thapa	- Chairman
2. Kirti Nidhi Bista	- Vice-Chairman
3. Vedananda Jha	- Minister
4. Nagendra Prasad Risal	- "
5. Kedar Man Byathit	- "
6. Triveni Prasad Pradhan	- "
7. Giri Prasad Budathoki	- "
8. Gyanendra Bahadur Karki	- Asstt. Minister
9. Dyanadhi Sharma	- "
10. Jagat Bahadur Singh	- "
11. Gunjeswari Prasad Singh	- "
12. Bishnu Bahadur Thumbahampe	- "

(d) According to the First Amendment of the Constitution new Council of Ministers was formed under the Prime Ministership of Soorya Bahadur Thapa on January 27, 1967. Other Ministers and Assistant Ministers retained their same post.

1. Soorya Bahadur Thapa	- Prime Minister
2. Kirti Nidhi Bista	- Dy. Prime Minister

(e) Reshuffle of the Council of Minister on 28 March 1967

1. Soorya Bahadur Thapa	- Prime Minister
2. Kirti Nidhi Bista	- Dy. Prime Minister
3. Giri Prasad Budathoki	- Minister
4. Nagendra Prasad Risal	- "
5. Kedar Man Byathit	- "
6. Dr. Triveni Prasad Pradhan	- "

(f) New Council of Ministers was formed after the elections of various levels of Panchayats on 29 May 1967*

1. Soorya Bahadur Thapa	- Prime Minister
+2. Kirti Nidhi Bista	- Dy. Prime Minister
3. Giri Prasad Budathoki	- Minister
4. Surendra Bahadur Basnet	- "
5. Gahendra Bahadur Rajbhandari	- "
6. Rajeswar Devakota	- "
7. Dyanadhi Sharma	- State Minister
8. Gyanendra Bahadur Karki	- "
9. Gunjeswari Prasad Singh	- "
10. Bishnu Bahadur Thubahampe	- "
11. Rudra Prasad Giri	- "

12. Narahing Bhakta Tulachand	- Asstt. Minister
13. Nava Raj Subedi	- "
14. Netra Bichram Thapa	- "
15. Chandra Bahadur Paldamgwa	- "
16. Tejendra Bahadur Khadka	- "
17. Biswa Nath Agrawal	- "
18. Beda Bahadur Panth	- "
19. Nara Bir Jung Shahi	- "
20. Moti Lal Rajbhandari	- "
21. Ratna Bahadur Rai	- "
22. Loka Pratap Bista	- "

* Minor change in the portfolio occurred on 22 April 1968.
+ Deputy Prime Minister, Kirti Nidhi Bista was dropped from the Council of Ministers on September 25, 1968.

(g) H.M. reconstituted the Council of Ministers on 25 September 1968

1. Soorya Bahadur Thapa	- Prime Minister
2. Giri Prasad Budathoki	- Minister
3. Surendra Bahadur Basnet	- "
4. Gahendra Bahadur Rajbhandari	- "
5. Rudra Prasad Giri	- "
6. Nava Raj Subedi	- State Minister
7. Bishnu Kumar Thembahampe	- "
8. Basu Dev Dhungana	- "
9. Biswa Nath Agrawal	- "
10. Loka Pratap Bista	- "
11. Netra Bickram Thapa	- "
12. Rabindra Nath Sharma	- "
13. Nem Bahadur Swar	- "
14. Singha Dhoj Khadka	- "

* Prime Minister Soorya Bahadur Thapa had resigned on April 3, 1969.

15. Mr. Kirti Nidhi Bista has been appointed as the Prime Minister of Nepal and constituted the Council of Ministers on April 7, 1969 - April 13, 1970

1. Kirti Nidhi Bista	- Prime Minister
2. Khadga Bahadur Singh	- Minister
3. Giri Prasad Budathoki	- "
4. Rudra Prasad Giri	- "
5. Gahendra Bahadur Rajbhandari	- "
6. Nava Raj Subedi	- "
7. Basu Dev Dhungana	- "
8. Gunjeswari Prasad Singh	- State Minister
9. Home Bahadur Shrestha	- "
10. Bindeswari Prasad Singh	- "
11. Lal Bahadur Khadayat	- "
12. Khadga Bahadur Gurung	- Asstt. Minister
13. Harish Chandra Mahat	- "
14. Dillisheer Rai	- "
15. Bhakti Man Dewan	- "
16. Jit Bahadur Khadga	- "

16. H.M. Heads the Council of Ministers on April 13, 1970 - April 14, 1971.

1. Gahendra Bahadur Rajbhandari	- Minister
2. Giri Prasad Budathoki	- "
3. Salindra Kumar Uphadhyaya	- "
4. Nava Raj Subedi	- "
5. Narendra Kumar Pradhan	- "
6. Haris Chandra Mahat	- Asstt. Minister
7. Chaturbhuj Prasad Singh	- "
8. Keshav Chandra Gautam	- "
9. Jog Mehar Shrestha	- "

17. (a) Kirti Nidhi Bista became the Prime Minister on April 4, 1971

*1. Kirti Nidhi Bista	- Prime Minister
2. Gahendra Bahadur Rajbhandari	- Minister
3. Nava Raj Subedi	- "
4. Rudra Prasad Giri	- "
5. Gyanendra Bahadur Karki	- "
6. Chaturbhoj Prasad Singh	- "
7. Shambhu Prasad Gyawali	- "
8. Jog Mehar Shrestha	- State Minister
9. Keshav Chandra Gautam	- "
10. Bishnu Prasad Lohani	- "
11. Ganesh Bahadur Gurung	- Asstt. Minister
12. Dambur Bahadur Basnet	- "
13. Janak Bahadur Shah	- "
14. Krishna Raj Aryal	- "

* Prime Minister Kirti Nidhi Bista resigned from the Prime Ministership when his government was charged by H.M. on the insident inside the House on August 16, 1971.

(b) Kirti Nidhi Bista heads the new Council of Ministers on August 29, 1971.

1. Kirti Nidhi Bista	- Prime Minister
2. Gyanendra Bahadur Karki	- Minister
3. Chaturbhuj Prasad Singh	- "
4. Shambhu Prasad Gyawali	- "
5. Bishnu Prasad Lohani	- "
6. Joga Mehar Shrestha	- State Minister
7. Keshav Chandra Gautam	- "
8. Loka Pratap Singh	- "
9. Krishna Raj Aryal	- Asstt. Minister
10. Harish Chandra Mahat	- "
11. Karna Bahadur Rai	- "
12. Jaya Prakash	- "
13. Yuva Raj Jung Shah	- "
14. Shanker Man Singh	- "
15. Bhoj Raj Ghimere	- "
16. Ganesh Bahadur Gurung	- "
17. Janak Bahadur Shah	- "

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GLOSSARY OF NEPALI WORDS

GLOSSARY

Achar Samhitha	Code of Conduct
Adalat	Court
Adda	An Office or department
Adhirajya	Kingdom
Adhyadesh	Ordinance
Ain	Legal Code
Ain Khana	Law Department
Amini	Name of lower courts
Anchaladis	Zone
Anchaladish	Zonal Commissioner
Anchal Samiti	Zonal Council
Apil Adda	Appellate court
Bada Guruju	The Chief Rajguru
Bada Hakim	Designation of a District Governor
Bargiya Sangathan	Class Organisations
Bharadars	Chief Councillors. Literally means those who bear the burden of the state.
Bharadari Sabha	Chief Councillor's Council
Bhasan	Speech
Chautaria	One of the Royal collaterals
Chappe	Stamp or Seal
Dapha	Clause
Dharmadhikar	A respected important figure in the Royal Court. He was more or less the Chief Judge in the Shah period and Rana period till 1951.
Dui-Chhape	Documents bearing the seals of both Sree Tin Maharaja (Prime Minister) and Chief Shaheb (Commander-in-Chief)
Eka Chapee	Documents bearing the seal of Sree Tin Maharaja (Prime Minister)
Fauzadhari	Criminal
Gaddiko Ain	Statutes relating to the Throne
Gaon	Village
Gazette	Official notice
Ghoshana	Proclamation
Goswara	District office in the Hill sides
Isthihar	Notification or promulgation
Jangi Adda	Military Office (Defence department)
Jangi Kanun	Military Law
Kazi	A Civil Officer
Kausal	Council
Khadga Nishana	Sree Tin Maharaja's Seal
Khana	An Office or department
Kot Ling	Name of a Court
Kumari Chowak	Accounts or Audit department

Lal	Red
Lal-Mohar	A legal instrument by which the King confers titles, honours, offices and other jagirs, ratifies legislation and issue ordinances etc. known so because of the red seal which is put on the document along with the Royal signature
Lath Saheb	Heir apparent in the third line of succession of Sree Tin Maharaja
Mades Bandobast	Tari administration
Maharaja	Title of the Rana Prime Minister
Maharajadhiraja	Title of the King, meaning 'King of Kings'
Mahasabha	Senate
Maha Samant	Chief of the Chieftains
Mal Adda	Revenue Office
Mantry Mandal	Cabinet
Mantry Parishad	Council of Ministers
Mohar	Seal
Mukhtiyar	(1) Designation of the Chief Minister in the pre-Rana period; (2) Heir apparent in the second line of Sree Tin Maharaja
Mulki Adda	Home and General department
Mulki Ain	Law of the Realm or Legal Code of the country
Munsi Khana	Foreign Office
Mool Purohit	Chief Priest of the King
Nagar	City
Nazarana	Gift
Nirdeshan	Directive
Nyaya	Justice
Nyayalaya	Court
Nyayapalika	Judicial Department
Pahar Bandobast	Hill administration
Pancha	Council of five
Panchayat	An assembly of men who decide dispute among villagers
Pahat	Section
Pajani	The King and the Prime Minister used to renew all civil and military officers of the state every year
Pradhan Nyayalaya	High Court
Pratinidhi Sabha	House of Representatives
Prithuladish	Grand Master
Raj Kajko Ain	Statutes relating to the affairs of the state
Rajsabha	State Council
Rajpratinidhi Parishad	Royal Representative Council or Regency Council
Rastra Sabha	State Council
Rastriya Panchayat	National Panchayat
Sadah	House
Salahkar Sabha	Advisory Assembly
Sanad	Regulation or a letter of appointment
Sandesh	Message

Samvidhan	Constitution
Sarbochha Adalat	Supreme Court
Sardar	A military officer in the time of Shah and civil Officer in the time of Rana
Swal	Law
Sree	An honorofic prefix
Sree Panch Maharajadhiraja	King of Kings
Sree Panch Yuvarajdhiraja	Heir apparent (the person who is first in the line of succession to estate, Crown Prince)
Sree Panch Navayvarajdhiraj	Heir apparent in the line of succession to an estate, Crown Prince after Yuvarajdhiraj.
Thamatuti	Continuation of an appointment in the Rana period.
Thar-Ghar (Chhathar)	Six Chief families of the Shah period.
Thulo Chap	A large seal made of silver called Thulo Chap bearing Sree Tin Maharaja's name, decoration, and titles in Nepali, English, Persian and Tibetan
Tok Chapp	Seal with comments
Uvarajdhiraj	Heir apparent of the King
Vamsavali	Genealogical history
Zilla	District
Zilla Sabha	District Council
Zilla Adalat	District Court

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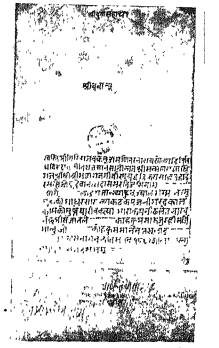


[illegible]राजचक्रचूडामणि नरनारायणेत्यादि विविधविरुदावलीवि
राजमानमानोन्नत ओजस्वीराजन्य प्रोज्ज्वलनेपालतारा ॐ रामपट्ट अतुलज्यो
तिर्मय[illegible]पट्ट अतिप्रबलगोरखादक्षिणबाहु महाधिपति श्रीमन्महाराजा
धिराज श्री श्री श्री महाराज त्रिभुवन वीर विक्रम जङ्ग बहादुर शाहबहादुर समसे
र जङ्ग देवानाम सदा समरविजयिनाम्

Lal-Mohar which literally means a red seal is the name given to the legal instrument by which the King confers titles, honours, office and jagirs, ratifies legislation and issues ordinances, etc. It is known as Lal-Mohar because of the red seal which is set on the document along with the Royal signature.

PHOTO PRINT No. II

First Lal-Mohar granted to the Royal Family Member by the King for Mukhtiyarship in Nepal



Ex-King Rana Bahadur was appointed Mukhtiyar which literally means a Chief Minister by his son, King Girvan Juddha Bikram Shah, in March 1804 (Falgun, 8, 1862 V.S.) Rana Bahadur Shah was the first to be appointed by a Lal-Mohar to the post of the Mukhtiyar.

See: Bhimsen Thapa ra Tatkalin Nepal, Kathmandu.

PHOTO PRINT No. III

Sanad Patra

स्वस्तिश्रीगिरिराजचक्रचूडामणिनरनारायणेत्यादिविविधविरुदावलीवि
राजमानमानोन्नतश्रीमन्महाराजाधिराजश्रीश्रीश्रीमहाराजसुरेन्द्रवि
क्रमसाहबहादुरसम्सेरजङ्गदेवानांसदासमरविजयिनाम्

The term Sanad Patra means an authorised statement. It popularly means giving the authorised version of the Royal Orders and Ordinances. So Sanad Patra means Grant, Certificate, authority, licence or warrant etc. This has been sealed by the Lal-Mohar of the King and witnessed by the high officials of the Royal Court.

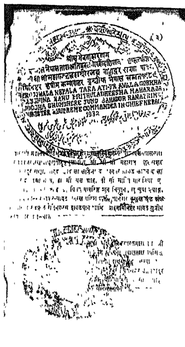
PHOTO PRINT No. IV

Thulo Chap

In the Rana period at first there was the practice of putting Prime Minister's (Sree Tin Maharaja) title on Dui Chap Sanad. But from the time of Chandra Shamsher a large seal made of silver called Thulo Chap bearing Prime Minister's name, decorations and titles in Nepali, English, Persian and Tibetan was affixed on all documents like Sanad, Sawal etc.

PHOTO PRINT No. V

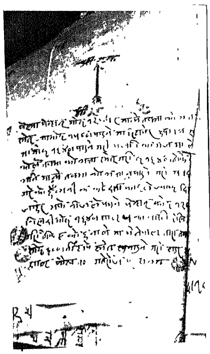
Dui Chhape



All important Ains to be valid were to be signed and stamped by both the Prime Minister (Sree Tin Maharaja) and the Commander-in-Chief (Mukhtiyar) after the approval of Kausal (Council).

PHOTO PRINT No. VI

Khadga Nishana



The Prime Minister (Sree Tin Maharaja) could issue executive orders relating to any department. Such an order was known as Khadga Nishana because it bore the Prime Minister's Seal containing the print of Khadga, i.e., Sword. The Khadga Nishana became, in effect, a substitute for the King's Lal-Mohar.

PHOTO PRINT No. VII

Eka Chhape



The Seal of the Commander-in-Chief (Mukhtiyar = Chief Saheb).